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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1967

No. 52

S. EDWARD BLOOM, PETITIONER,

vs.

ILLINOIS.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED FEBRUARY 16, 1967
CERTIORARI GRANTED APRIL 17, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

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S. EDWARD BLOOM, PETITIONER,

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[fol. A]

IN THE

SUPREME COURT OF THE STATE OF ILLINOIS

No. 39325

S. Edward Bloom, Defendant-Appellant,

vs.

People of the State of Illinois, Plaintiff-Appellee.

Appeal from the Circuit Court of Cook County, Probate Division.

Honorable Robert Jerome Dunne, Judge Presiding.

Abstract of Record—Filed May 10, 1966 and Additional Abstract of Record—Filed May 27, 1966

[fol. 1]

Placita to Volume I of record.

Order of Court dated August 4, 1964 granting leave to Edward L. S. Arkema to file his appearance for Edward Walliser and Marie Connolly, sole heirs, in the Estate of William A. Meloday, Deceased, in the Circuit Court of Cook County, Illinois, Probate Division, No. 64 P 6268, Docket 669, Page 506.

The appearance of Edward Walliser and Marie Connolly in said Estate of Melody by their attorney Edward L. S. Arkema.

The Petition for Probate of Will and For letters Testamentary dated August 7, 1964 filed in the Office of the Clerk of the Circuit Court of Cook County, Illinois, Probate Division in the said Estate of Melody on August 11, 1964 on behalf of The Northern Trust Co. of Chicago, Illinois by its attorney, S. Edward Bloom:

[fol. 2]

(See opposite) ☞

ORIGINAL

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY (Rev. 1/64)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT—PROBATE DIVISION

Estate of
WILLIAM A. MELODY,
Deceased

No64 P 06268
Docket 669
Page 506

Hearing on petition set for September 25 1964
2 P m., Room C-16
County Courthouse,
118 N. Clark St., Chicago.

_____ on oath states that he is a Second Vice President an Assistant Secretary of The Northern Trust Company and is authorized to execute this petition:

1. WILLIAM A. MELODY, whose place of residence at the time of death was 2052 Lincoln Park West, Chicago (Address) (City) Cook (County) Illinois (State), died July 6th, 19 64, at Chicago, Illinois (City and State), leaving a will dated June, 19 64

2. The approximate value of the real and personal estate of the testator in this state is:

Personal estate $600,000.00 Real estate $ None

3. The names and post-office addresses of the testator's heirs, legatees and devisees are (list heirs first):

Name	Relationship	Non-M (Under 21 Person-D)	Minor-M (Under 21 Person-C)	Post-office address (If unknown, so state)
see attached exhibit				

FILED
AUG 11 1964
JOSEPH J. McDONOUGH
Clerk of the Circuit Court
646 646

4. The testator nominated as executor the following, qualified and willing to act:

Name: THE NORTHERN TRUST COMPANY — Post-office address: 50 S. LaSalle Street, Chicago, Ill.

Petitioner asks that the will be admitted to probate and that letters testamentary issue.

Petitioner asks for the appointment of the following as appraiser, qualified to act:

EDWARD ANDERSON

John McNeil
Second Vice President - Assistant Secretary
THE NORTHERN TRUST COMPANY
50 South La Salle St., Chicago, Illinois 60690

Name S. EDWARD BLOOM
Attorney for petitioner
Address 133 W. Randolph Street
City Chicago, Illinois 60601
Telephone De. 2-2922

Signed and sworn to before me August 7, 1964
Notary Public
My commission expires February 27, 1968

The undersigned hereby accepts the office of executor, as prayed in the within petition, if so appointed by the Circuit Court of Cook County, Illinois.

THE NORTHERN TRUST COMPANY

By _____
Second Vice President - Assistant Secretary

If a consul or consular agent is to be notified, name country: _____

(4)

COMPARED
65L 3 6

Name [fol. 3]	Relationship	Heir-H Legatee-L Devisee-D	Minor-M Incompetent-I	Post-office address
Edward Leiser	None	L		642 W. Deming Place, St. Clement's Church, Chicago, Ill.
Father Wm. A. Fletcher	"	L		Manhattansvill College, Purchase, N. Y.
Rev. F. J. Gilligan	"	L		2001 Dayton Ave., St. Paul, Minn.
Bishop L. Hock	"	L		423 N. Deluth Ave., Sioux Falls, So. Dakota
Bishop Shenck	"	L		2215 E. 2nd St., Duluth, Minn.
Jean Hock	"	L		423 N. Deluth Ave., Sioux Falls, So. Dakota
Bishop Connelly	"	L		394 Highland Ave., Fall River, Mass.
Eve Weeks	"	L		1312 Walsh St., Apt. 42-D Coral Gables, Fla.
Clara Beck	"	L		5046 N. Winchester, Chicago, Ill.
Pauline Owens	"	L		3926 W. Wilcox Ave., Chicago, Ill
Susie Harris	"	L		3637 Flow Ave., Miami, Fla.
Mrs. Ray Gibbin	"	L		220 Pleasant St., Chicago, Ill.
William King	"	L		1344 19th, Gulf Port, Miss.
Eddie McCoy	"	L		3224 Fulton St., Chicago, Ill.
Marie Connelly	Niece	L + N		318 -19th St. S.E., Cedar Rapids, Iowa
Edward Walliser	Nephew	L + M		7801 S. Homan Ave., Chicago, Ill.
Frank Fite, Jr.	Nephew	L		406 Avoca Rd., Nashville, Tenn.
Eileen Connelly	None	L		318-19th St., S.E. Cedar Rapids, Iowa
Edna Fite	sister-in-law	L		406 Avoca Rd., Nashville, Tenn.
Margaret Fite	niece	L		406 Avoca Rd., Nashville, Tenn.
Jimmy Fite	nephew	L		406 Avoca Rd., Nashville, Tenn.
Helen Hegan	sister-in-law			7203 N. Hamilton, Chicago, Illinois
Margaret Reynolds	aunt	L		10780 Bensley, Chicago, Ill.
Harry Reynolds	cousin	L		455 W. 144th St., Riverdale, Ill.
Frank Reynolds	cousin	L		10780 Bensley, Chicago, Ill.
Alma Allen	none	L		1285 Washburn Ave., Apt. B, Chicago, Ill.
Marie Fahey	cousin	L		c/o Harry Fahey, 455 W. 144th St., Riverdale, Ill.
Dr. Charles Beber	None	L		Huntington Bldg., Miami, Fla.
Ted Sodowski	None	L		2050 Lincoln Park West, Receiving Room, Chicago, Ill.
Eunice Liberty	None	L		1711 N.W. 62nd Terrace, Miami, Fla.
Kay Bowman	None	L		401 Fullerton Av., Chicago, Ill.
Mary Bowman	None	L		401 Fullerton Av., Chicago, Ill.
George Levitt	None	L		205 Wacker Dr., Chicago, Ill.
Bernice Rummie	None	L		117 N. Snelling Ave., St. Paul, Minn.
Dr. Collin Swards	None	L		Huntington Bldg., Miami, Fla.

COMPARED

[fol. 4]

ORDER OF COURT, ON MOTION OF EDWARD WALLISER, IMPOUNDING WILLS OF MELODY DATED OCTOBER 4, 1962 AND JUNE 21, 1964

PETITION OF EDWARD WALLISER—Filed August 25, 1965

Edward Walliser, petitioner, respectfully alleges:

1. That William A. Melody, whose place of residence at the time of death was 2052 Lincoln Park West, Chicago, Cook County, Illinois, died on the 6th day of July A.D. 1964, at Chicago, Illinois, leaving a Last Will and Testament dated October 4, 1962, and a Codicil thereto dated August 9, 1963.

2. That the said Last Will and Testament of William A. Melody, together with the Codicil, and a petition that the same be admitted to probate have been filed with the Clerk of this Court and was set for hearing on the 11th day of August, A.D. 1964, at 2:00 o'clock p.m. in Room 646 of the County Courthouse, Chicago, Illinois.

3. That petitioner herein, together with Marie Connolly, a niece of the deceased, are the sole heirs at law of William A. Melody, Deceased.

4. That the said Last Will and Testament dated October 4, 1962, and the Codicil thereto dated August 9, 1963, were prepared by the testator's attorney, Louis Swidler of the firm of Lelivelt, Swidler & Juron, and by the terms of the said Codicil, The Northern Trust Company, located at 50 South La Salle Street, Chicago, Illinois, was designated as Executor and the said The Northern Trust Company assented to act as such Executor in the administration of this estate.

5. That subsequent to the above and foregoing, an instrument purporting to be the Last Will and Testament of [fol. 5] William A. Melody, Deceased, prepared by attorney S. Edward Bloom, with offices at 188 West Randolph Street, Chicago, Illinois, and dated on the face thereof as having been executed on the 21st day of June, A.D. 1964, which

said attorney admittedly was not the attorney for the said William A. Melody, Deceased, in his behalf and who admittedly did not appear or present himself at the time of the execution of the said document, has filed a belated petition herein on the 11th day of August, 1964, at 2:00 o'clock p.m. in room 646 of this Court in these same proceedings requesting the appointment of The Northern Trust Company as Executor under the terms and provisions of the document aforesaid, a copy of which is hereto attached and incorporated herein as Exhibit "A"; that in attaching said Exhibit "A" to this petition, petitioner in no way vouches for its validity or authenticity only submitting it as a photostatic copy of a document filed in these proceedings and now proposed for probate by the said S. Edward Bloom and The Northern Trust Company.

6. That information concerning the existence of the said purported Last Will and Testament, dated June 21, 1964, did not come to the knowledge of The Northern Trust Company or petitioner herein until July 16, 1964, some time after the filing of the Last Will and Testament dated October 4, 1962, and the Codicil dated August 9, 1963, the same being presented for the first time by one Pauline Owens, former practical nurse attending William A. Melody, and that now because of certain facts that have come to the knowledge of petitioner, through an investiga-
[fol. 6] tion that has been conducted and carried on by his attorney, Edward L. S. Arkema, petitioner is informed and believes and upon such information states the fact to be that there is attending the execution of the said purported Last Will and Testament of William A. Melody, dated the 21st day of June, A.D. 1964, a serious condition wherein fraud has been committed upon this Court in the execution and filing for probate of the said document referred to herein as Exhibit "A".

7 That the said The Northern Trust Company by reason of being appointed as Executor in the Codicil dated August 9, 1963, and in Exhibit "A", dated June 21, 1964, is

in a dual and conflicting position and further by reason of merely acting now as Administrator to Collect is without authority, power or duty to search further into the question of fraud and compulsion in the preparation, execution and filing of the said document referred to herein as Exhibit "A".

8. That by reason of the conflict of interest and dual position that The Northern Trust Company finds itself in and by reason of the limitation of statutory power and authority it now has as Administrator to Collect, it is without ability or obligation to act in searching out the facts pertaining to fraud exercised in the execution of the purported Last Will and Testament herein referred to as Exhibit "A".

9. That in order to properly defend, secure and protect the assets of this estate toward the orderly administration thereof in accordance with the laws of the State of Illinois and the Rules of this Court provided, and in order to secure [fol. 7] and present properly before this Court all of the facts and evidence pertaining to the execution of said Exhibit "A", it is necessary that one with proper authority and under the direction and control of and accountable to this Court have access to all records of hospitals, physician's records, banking records, who in so doing will necessarily insure and secure the confidence of all witnesses, the employees of hospitals and physicians.

10. That at the conclusion of said hearing now set for the 23rd day of September, 1964, it will be necessary for this Court in connection with the presentation of evidence to determine whether or not direct contempt has been committed by any person or persons participating therein and that a suitable person, therefore, should be appointed by this Court on this motion or its own motion to act pending the final conclusion of said proceedings in the capacity of amicus curiae; that said appointment should be made of said Amicus Curiae to assure and sustain the honor and dignity of this Court and to punish, as this Court sees fit,

any and all persons who this Court shall find guilty of a fraud upon this Court.

11. That the assets of the above-entitled estate, as petitioner is informed and upon such information states the fact to be, is in excess of $600,000.00, and that since Pauline Owens, a practical nurse, has been attending the said William A. Melody, Deceased, there has been expended out of the assets of his estate sums in excess of $150,000.00 within a period of less than one (1) year prior to the date of the death of the said William A. Melody; that on the date of death of William A. Melody the sum of $35,400.00 was drawn against The Northern Trust Company and chargeable against securities on deposit with the said trust [fol. 8] company, $15,000.00 being paid to said Pauline Owens and her brother as a gift causa mortis, but said William A. Melody had long since passed the day he had legal capacity to make such a gift; that it shall now become necessary for one not subject to any conflict of interest or dual capacity to search into the monies drawn on said account and to determine the disposition thereof and particularly the cashier's checks drawn against the said account within but a few hours of the date of death of the said William A. Melody in the total sum of $35,400.00.

12. That in order to properly examine into all of the circumstances of fraud and compulsion attended upon the filing and presentation of the said purported Last Will and Testament of William A. Melody, it will become necessary to obtain access to hospital records, statements from physicians attending the said William A. Melody up to the time of his death, and examine witnesses otherwise to determine all of the facts and circumstances aforesaid so that they may be properly presented to this Court; that in order to efficiently and effectively accomplish the foregoing, an investigator with broad powers should be appointed to act under the power and direction of this Court and directly

accountable to this Court; that said investigator acting under authority of this Court will have access to all records of hospitals, physician's records and reports and banking records, and will necessarily insure and secure the confidence of all witnesses in this behalf; that said investigator could best act in the capacity as Amicus Curiae with specific and broad powers given to him.

[fol. 9] 13. That it is not petitioner's purpose or intention by presentation of this petition to contest the purported Last Will and Testament of William A. Melody dated June 21, 1964, but petitioner, with the knowledge and information that petitioner has surrounding the circumstances hereinabove set forth, cannot properly and conscientiously consent to the admission of said purported Last Will and Testament to probate, even though he is a beneficiary in the sum of $70,000.00 as provided in said document Exhibit "A"; on the other hand as a beneficiary in said purported Last Will and Testament, petitioner wishes to make it clear for the record that he is in no way a party to or participated in the procurement, execution and filing of said document Exhibit "A" but does recommend that an Amicus Curiae with specific and broad powers and authority be appointed on this Court's own motion or in the alternative the motion of Edward Walliser.

Wherefore, petitioner prays:

A. That this Honorable Court appoint an Amicus Curiae with special and broad powers, the same to be provided for in the order of appointment, to investigate all matters pertaining to the preparation, execution, filing and presentation of the purported Last Will and Testament of William A. Melody dated June 21, 1964, a photostatic copy of which is attached hereto as Exhibit "A", and to prosecute any fraud attended upon the same, to institute proceedings for discovery, subpoena and present witnesses preliminary to and during the hearing on the presentation of the said purported Last Will and Testament of William

A. Melody, Deceased, now set for September 23, 1964, at 2:00 p.m., or upon any date to which said cause may be continued.

[fol. 10] B. That said Amicus Curiae be authorized to take any and all steps as may be necessary and proper to bring before this Court all evidence concerning monies expended for the medical care, support and maintenance of William A. Melody from August 1, 1963, to and including the date of his death, to determine what, if any, of the said expenditures and disbursements were proper and duly authorized either by William A. Melody or a duly authorized agent in his behalf or whether or not any of the said expenditures were attended with fraud, compulsion or other improper conduct for which a citation may issue and to institute any and all proceedings to recover all monies or property rightfully belonging to this estate.

C. That the said Amicus Curiae as this Court may appoint shall be required to make a full report to this Court from time to time as this Court may order and direct.

D. For such other and further relief as the Court may deem meet in the premises.

Edward Walliser.

State of Illinois,
County of Cook, ss.:

Edward Walliser, being first duly sworn, on oath deposes and says that he has read the foregoing Petition by him subscribed, knows the contents thereof and that the same is true in substance and in fact, except as to those matters stated on information and belief, and as to those matters, he verily believes the same to be true.

Edward Walliser.

[fol. 11] Subscribed and Sworn to before me this 25 day of August, A.D. 1964.

Marilynne M. Olsen, Notary Public.

(Seal)

EXHIBIT A TO PETITION

LAST WILL AND TESTAMENT
OF
WILLIAM A. MELODY

I, WILLIAM A. MELODY, of the County of Cook and State of Illinois, being of sound mind and memory do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking any and all Wills and Codicils by me at any time heretofore made.

FIRST: I order and direct my Executor hereinafter named to pay all my just debts and funeral expenses as soon after my death as practicable. I also direct my said Executor to pay all inheritance taxes and other Governmental taxes, charges or liens imposed upon my estate passing under the terms of this, my Last Will and Testament, or upon the interests of any of the legatees, devisees or beneficiaries therein, by any present or future law of the United States, or of any State relating to the transmission of property by descent or devise, and that all such charges, taxes and liens be considered and treated as expenses and costs of administering my estate, and be paid out of the same before distribution thereof, if possible.

SECOND: I give, devise and bequeath to my beloved relatives and my beloved friends the following specific bequests and devises:

[fol. 12]

1. To Father William A. Fletcher I give my tape recorder;
2. To Clara Beck I give my portable television set;
3. To Bishop Connelly I give the rugs in my living room;
4. To Pauline Owens I give the rugs in my bedroom, my chinaware and my cooking ware;

5. To Edward Walliser I give my silverware and record player;

6. To Mary Fite I give Six (6) silver goblets;

7. To Helen Heagan I give Six (6) silver goblets;

8. To Frank Fite I give all of my clothing and shoes;

9. To Monsignor Edward Leiser of Chicago, Illinois, I give the sum of Seventy Thousand ($70,000.00) Dollars;

10. To Father William A. Fletcher of New York I give the sum of Ten Thousand ($10,000.00) Dollars;

11. To Monsignor F. J. Gilligan of St. Paul, Minnesota, I give the sum of Ten Thousand ($10,000.00) Dollars;

12. To Bishop L. Hock of Sioux Falls, South Dakota, I give the sum of Ten Thousand ($10,000.00) Dollars;

13. To Bishop Shenck I give the sum of Ten Thousand ($10,000.00) Dollars;

14. To Jean Hock of Sioux Falls, South Dakota, I give the sum of Two Thousand ($2,000.00) Dollars;

15. To Bishop Connelly of Falls River, Massachusets, I give the sum of Ten Thousand ($10,000.00) Dollars;

16. To Eve Weeks of Miami, Florida, I give the sum of Five Thousand ($5,000.00) Dollars;

[fol. 13]

17. To Clara Beck of Chicago, Illinois, I give the sum of Thirty Thousand ($30,000.00) Dollars;

18. To Pauline Owens of Chicago, Illinois, I give the sum of Forty Thousand ($40,000.00) Dollars;

19. To Susie Harris of Miami, Florida, I give the sum of Five Thousand ($5,000.00) Dollars;

20. To Mrs. Ray Gibbin of Chicago, Illinois, I give the sum of Ten Thousand ($10,000.00) Dollars;

21. To William King of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars;

22. To Eddie McCoy of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars;

23. To my niece, Marie Connelly of Cedar Rapids, Iowa, I give the sum of Seventy Thousand ($70,000.00) Dollars;

24. To Edward Walliser of Chicago, Illinois I give the sum of Seventy Thousand ($70,000.00) Dollars;

25. To my nephew Frank Fite, Jr. of Nashville Tennessee, I give the sum of Seventy Thousand ($70,000.00) Dollars;

26. To Eileen Connelly of Cedar Rapids, Iowa, I give the sum of Ten Thousand ($10,000.00) Dollars;

27. To Edna Fite, of Nashville, Tennessee, my sister-in-law, I give the sum of Ten Thousand ($10,000.00) Dollars;

28. To my niece, Margaret Fite, of Nashville, Tennessee, I give the sum of Ten Thousand ($10,000.00) Dollars;

29. To my nephew, Jimmy Fite, of Nashville, Tennessee, I give the sum of Ten Thousand ($10,000.00) Dollars;

[fol. 14]

30. To my sister-in-law Helen Heagan, of Chicago, Illinois, I give the sum of Ten Thousand ($10,000.00) Dollars;

31. To my aunt, Margaret Reynolds, of Chicago, Illinois, I give the sum of Twenty Thousand ($20,000.00) Dollars;

32. To my cousin, Harry Reynolds, of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars;

33. To Frank Reynolds of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars;

34. To Alma Allen of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars;

35. To Marie Fahey of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars;

36. To Dr. Charles Beber of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars;

37. To Ted Sodowski of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars;

38. To Eunice Liberty of Miami, Florida, I give the sum of Five Thousand ($5,000.00) Dollars;

39. To Kay Bowman of Chicago, Illinois, I give the sum of Ten Thousand ($10,000) Dollars;

40. To Mary Bowman I give the sum of Two Thousand ($2,000.00) Dollars;

41. To George Levitt I give the sum of Five Thousand ($5,000.00) Dollars;

42. To Bernice Rummie I give the sum of Five Thousand ($5,000.00) Dollars;

43. To Dr. Collin Swards I give the sum of Five Thousand ($5,000.00) Dollars;

THIRD: I give, devise and bequeath all of the rest, residue and remainder of my estate whether real, personal or [fol. 15] mixed, of every kind and nature and wheresoever situated which I may own or be entitled at the time of my demise as follows:

1. Fifty (50%) Percent thereof of said remainder to the Catholic Charities of Chicago, Illinois;

2. Ten (10%) Percent thereof of said remainder to St. Ignatius High School;

3. Ten (10%) Percent thereof of said remainder to Loyola University;

4. Thirty (30%) Percent thereof of said remainder to St. Clements Church;

FOURTH: I do hereby appoint and nominate my good friend, ROBERT GARRETT, of the Northern Trust Company of Chicago because he is my lifelong friend and because I trust him and he did understand me and respect my wishes and that there be no misunderstanding of this my Last Will and Testament and I do strongly request again as I did almost a year ago when I came to the Northern Trust Company concerning my nephew, EDWARD WALLISER, at which time I explained to him some of my wishes to do as I please, that he be Executor of this My Last Will and Testament and should he refuse or be unable to act then in that event and that event only, I do hereby appoint the NORTHERN TRUST COMPANY OF CHICAGO as Successor-Executor of this my Last Will and Testament and further direct that he or it shall act without surety bond, said bond being expressly waived and I hereby give to my Executor or Successor-Executor full power and authority at any time or times, to sell, mortgage, pledge, exchange or otherwise deal with or dispose of the property compromising my estate, upon such terms as it shall deem best, to settle and compound any and all claims in favor of or [fol. 16] against my estate, as it shall deem best, and for any of the foregoing purposes, to make, execute and deliver any and all deeds, contracts, mortgages, bills of sale or other instruments necessary or desirable therefore, to settle any and all claims against my estate or any other instruments necessary or desirable therefore.

FIFTH: I strongly request that if any person or persons shall contest this Will that their share of my estate be eliminated and that any bequest left to them shall become null and void and made part of the residuary of my estate. I do hereby direct my Executor, in the event of a contest to this Will that he employ counsel to insure the probating of this my Last Will and Testament and that the cost of such litigation be born by my estate.

SIXTH: I leave the following instructions to my Executor with reference to my burial: I request to be waked at the Carrol Funeral Home in Chicago, Illinois, where I have lived for so many years. I specifically request that my Executor invite all the beneficiaries to a luncheon in my apartment or at the Golden Ox Restaurant and then and there read the terms of this Will to said beneficiaries.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this, my Last Will and Testament, consisting of Eight (8) pages, this page included and going on to the next page, on the margin of each of which I have affixed my signature and in the middle of this page for better identification, this 21st day of June, A. D. 1964.

X /s/ William A. Melody (SEAL)

[fol. 17] We hereby certify that the foregoing instrument consisting of Eight (8) typewritten pages, this being the Seventh page, and continued on the Eighth page, having the signature of the Testator, WILLIAM A. MELODY, upon the margins of the first, second, third, fourth, fifth, sixth and eighth and in the body of the seventh, was at Chicago, Illinois, this 21st day of June, A. D. 1964, by the said WILLIAM A. MELODY, after same was duly read to him page by page, and in the presence of each and all of us, signed, sealed, published and declared by him to be his Last Will and Testament, and we at his request and in his presence and in the presence of all of us, believing said Testator to be of sound and disposing mind and memory, and to have acted freely and voluntarily have hereunto subscribed our names as witnesses.

WITNESS	RESIDING AT
/s/ Velma R. Hayle	R5 Box 198 Waukegan, Ill.
/s/ Betty Jean Terrell	Ont 2-2309 290 Plain Ave., Zion, Ill.

ORDER ENTERED ON AUGUST 25, 1964:

This cause coming on to be heard on the verified petition of Edward Walliser, one of the heirs at law of William A. Melody, Deceased; and the court having read said petition and having heard the arguments of counsel thereon and being fully advised in the premises; does hereby on its own motion orders as follows:

It Is Hereby Ordered that Sam F. Fink, be and he is hereby appointed as amicus curiae in this cause, and he is hereby authorized and empowered to investigate all matters [fol. 18] pertaining to the preparation, execution, filing, and presentation of the purported last Will and Testament of William A. Melody, Deceased, bearing date June 21, 1964, and filed in this court on July 20, 1964; and to prosecute any fraud which he may discover attending the same; and to institute proceedings for discovery, to cause subpoenas to issue, and to present witnesses to this court preliminary to and during the hearing on the presentation of the said purported last Will and Testament of William A. Melody, Deceased.

It Is Further Ordered that said amicus curiae is hereby authorized to take any and all steps that may be necessary and proper to bring before this court all evidence concerning moneys expended for the medical care, support, and maintenance of William A. Melody from August 1, 1963, to and including the date of his death; to determine what, if any, of said expenditures and disbursements were proper and duly authorized either by William A. Melody or any duly authorized agent in his behalf; and to determine whether or not any of said expenditures were attended with fraud, compulsion, or other improper conduct for which a citation may issue herein; and to institute any and all proceedings to recover all moneys or property rightfully belonging to this estate.

It Is Further Ordered that the said amicus curiae make a full report to this court from time to time.

Enter this 25th day of August, 1964.

Robert Jerome Dunne, Judge.

[fol. 19]

No. 64 P 6268

PETITION OF EDWARD WALLISER AND MARIE CONNOLLY—
Filed September 10, 1964

To: The Honorable Robert Jerome Dunne,
Presiding Judge of said Court:

Edward Walliser and Marie Connolly, petitioners, respectfully allege:

1. That William A. Melody, whose place of residence at the time of death was 2052 Lincoln Park West, Chicago, Cook County, Illinois, died on the 6th day of July, A. D. 1964, at Chicago, Illinois, leaving a Last Will and Testament dated October 4, 1962, a copy of which is attached hereto as Exhibit "A", and a Codicil thereto dated August 9, 1963, a copy of which is attached hereto as Exhibit "B", both of which are incorporated herein and made a part hereof.

2. That the said Last Will and Testament of William A. Melody, together with the said Codicil, and a petition, a copy of which is attached hereto, incorporated herein and made a part hereof as Exhibit "C", was filed with the Clerk of this Court on July 9, 1964, was then and there set for hearing before this Court on the 11th day of August, A.D. 1964, at 2:00 o'clock p.m. in Room 646 of the County Courthouse, Chicago, Illinois; that the above and foregoing proceeding was accordingly then pending before this Court for admission to probate of the said Last Will and Testament of William A. Melody, Deceased, dated October 4, 1962, and the Codicil thereto dated August 9, 1963.

[fol. 20] 3. That petitioners herein, Marie Connolly, a niece of the decedent, and Edward Walliser, a nephew of the decedent, are the sole heirs at law of William A. Melody, Deceased.

4. That the said Last Will and Testament dated October 4, 1962, and the Codicil thereto dated August 9, 1963, were prepared by the testator's attorney, Louis Swidler of the firm of Lelivelt, Swidler & Juron, and by the terms of the said Codicil, The Northern Trust Company, located at 50 South La Salle Street, Chicago, Illinois, was designated as Executor and the said The Northern Trust Company assented to act as such Executor in the administration of this estate.

5. That Pauline Owens, defendant herein, was employed as a practical nurse by the said William A. Melody, Deceased; that Alma Allen, defendant herein, was also employed as a practical nurse by the said William A. Melody, Deceased.

6. That the said S. Edward Bloom defendant herein, is duly licensed to practice law in the State of Illinois and has offices located at 188 West Randolph Street, Chicago, Illinois.

7. That Velma Hoyle, defendant herein, is a practical nurse residing at Route 5, Box 198, Waukegan, Illinois; that Betty Jean Tewell, defendant herein, is a granddaughter of the said Velma Hoyle, who was procured to act as hereinafter related as a witness by Velma Hoyle at the instance and request of the said Pauline Owens.

8. That on the 14th day of July, 1964, subsequent to the death of the said William A. Melody, said Pauline Owens did employ the legal services of the said S. Edward Bloom [fol. 21] to dictate the document attached hereto, incorporated herein and made a part hereof as Exhibit "D", which, except for the handwriting and notations in ink made hereon and the signatures of the witnesses, together

with their addresses, thereto affixed, was dictated to one Sandra Kernene, by said S. Edward Bloom, for this purpose employed, all of which the said Pauline Owens did and procured knowing that the said William A. Melody had departed this life on the 6th day of July, 1964; that the said Pauline Owens upon the preparation and completion of the document hereto attached as Exhibit "D", except, the ink markings which the said Pauline Owens did procure or affix herself to the said Exhibit "D" as the signature of the said William A. Melody, Deceased, and in furtherance of her conspiracy, together with the said S. Edward Bloom, to have the said Exhibit "D" admitted as the Last Will and Testament of William A. Melody, Deceased, did cause the said Exhibit "D" to be taken by Alma Allen, defendant herein, and delivered to said Velma Hoyle at her residence and said Alma Allen did instruct the said Velma Hoyle, defendant, to insert as the date of execution and attestation the 21st day of June, 1964, said Exhibit "D" having and containing the year 1964 as the year of execution and attestation, the said Alma Allen, defendant, did request of the said Velma Hoyle that she secure an additional witness, which was done by the said Velma Hoyle, Betty Jean Tewell to also act as an attesting witness to said spurious Last Will and Testament of William A. Melody, Deceased; that at the time and on the occasion aforesaid when the said Exhibit "D" was delivered by the said Alma Allen, defendant, to Velma Hoyle, she, the [fol. 22] said Alma Allen, did so knowing full well that the said William A. Melody had died on July 6, 1964; that said Alma Allen, defendant, did prepare or otherwise procure a diagram of the apartment of the said William A. Melody, Deceased, showing the location of furniture and furnishings both in the dining room and living room, so as to familiarize the said Velma Hoyle and Betty Jean Tewell, defendants, to prepare them to testify on the occasion of the presentation for admission of the spurious Last Will and Testament of William A. Melody, Deceased, attached hereto as Exhibit "D", all of which was done by the said Alma

Allen and Pauline Owens in furtherance of the conspiracy aforesaid to effect the admission by this Court of the said Exhibit "D" for purposes aforesaid; that said Velma Hoyle and Betty Jean Tewell, defendants, did thereafter, at the instance and request of Pauline Owens and Alma Allen fraudulently affix their signatures as attesting witnesses dating the said Exhibit "D", affixing a date thereto as having been executed on the 21st day of June, 1964, all of which was done by the said defendants for the purpose of inducing the Circuit Court of Cook County, Illinois, County Department, Probate Division, to admit to probate said Exhibit "D", when they all did know on the 11th day of August, 1964, when the same was presented to this Court that the said Exhibit "D" was an invalid Last Will and Testament of William A. Melody, Deceased.

9. That subsequent thereto the said Pauline Owens did give, deliver and pay over to the said Velma Hoyle and the said Betty Jean Tewell as witnesses to the said spurious [fol. 23] Last Will and Testament of William A. Melody the sum of $150.00 each, and did promise thereafter to pay to the said witnesses, upon the admission of the said spurious Last Will and Testament to probate in the Circuit Court of Cook County, Illinois, County Department, Probate Division, the further sum of $1,000.00, upon their presentation of testimony necessary and incidental to have the said spurious Exhibit "D" admitted to probate as the Last Will and Testament of the said deceased; that the said witnesses, Velma Hoyle and Betty Jean Tewell, did not witness the execution of the said spurious Last Will and Testament by William A. Melody, Deceased, as so attested by each of them, but on the contrary affixed their names to the said Exhibit "D" subsequent to the death of the decedent, William A. Melody.

10. That the said Pauline Owens did thereafter pay to the said Velma Hoyle and Betty Jean Tewell, defendants herein, for their services in this behalf the total sum of $300.00 and promised thereafter to pay to the said Velma

Hoyle and Betty Jean Tewell the total sum of $1,000.00 or more for the purpose of influencing their testimony and procuring false testimony when the said attesting witnesses would be required to appear before the Court in accordance with the laws of the State of Illinois in such case made and provided upon matters aforesaid then pending before this Court; that the said Pauline Owens did in fact induce by said bribes and did make the promises aforesaid, all for the purpose of corruptly influencing the testimony of the said witnesses at the trial and hearing on the admission of the said spurious Last Will and Testament [fol. 24] of William A. Melody referred to herein as Exhibit "D"; that because of the above enumerated acts, Pauline Owens, S. Edward Bloom, Velma Hoyle, Betty Jean Tewell and Alma Allen all committed acts contemptuous in their nature all of which tended to obstruct, impede, burden and disrupt the orderly and impartial administration of the judicial processes inherent in this Honorable Court.

11. That thereafter on or about the 16th day of July, A.D. 1964, said Pauline Owens delivered said Exhibit "D", then fully and well knowing that the said Exhibit "D" was a forged and spurious Last Will and Testament of William A. Melody, Deceased, to a representative and agent of The Northern Trust Company for the purpose of having the same filed and admitted to probate as the Last Will and Testament of said deceased; that Robert Garrett was designated as Executor and the said The Northern Trust Company was designated in said Exhibit "D" as Exhibit "D" as Successor Executor, the said Robert Garrett being an employee of the said The Northern Trust Company, resigned in favor of The Northern Trust Company.

12. That Exhibit "D" as procured aforesaid by the said Pauline Owens, in paragraph Second, subparagraph 4 provides as follows:

"4. To Pauline Owens I give the rugs in my bedroom, my chinaware and my cooking wares;";

and

sub-paragraph 18 provides as follows:

"18. To Pauline Owens of Chicago, Illinois, I give the sum of Forty Thousand ($40,000.00) Dollars;".

[fol. 25] That Exhibit "D", paragraph Second, sub-paragraph 34, contains the following provision with reference to defendant Alma Allen:

"34. To Alma Allen of Chicago, Illinois, I give the sum of Five Thousand ($5,000.00) Dollars.".

13. That all of the aforesaid conduct by the said Pauline Owens, defendant, in procuring the preparation and transcription of the said Exhibit "D" attached hereto and in procuring and paying a bribe therefor in the sum of $300.00 to the witnesses to influence their testimony as witnesses to the purported said spurious Last Will and Testament of William A. Melody to the said spurious Exhibit "D", all of which was done by Pauline Owens and Alma Allen or either of them for the purpose of having the said Exhibit "D" admitted to the Circuit Court of Cook County, Illinois, County Department, Probate Division, committed a fraud upon said Court, and the said Pauline Owens and Alma Allen, defendants, together with the said Velma Hoyle and Betty Jean Tewell are guilty of contempt of this Court.

14. That the said S. Edward Bloom, having as aforesaid prepared the said spurious Last Will and Testament herein designated as Exhibit "D", did thereafter prepare a petition to have the said Exhibit "D" admitted to the Circuit Court of Cook County, Illinois, County Department, Probate Division, and did procure the signature of John McNeil, an officer of The Northern Trust Company, he the said S. Edward Bloom affixing his name thereto as attorney for the said trust company as follows:

[fol. 26] "Name S. Edward Bloom
Attorney for petitioner
Address 188 West Randolph Street
City Chicago, Illinois 60601
Telephone DE. 2-2922"

as is more fully shown from a photostatic copy thereof, attached hereto, incorporated herein and made a part hereof as Exhibit "E"; and the said S. Edward Bloom thereafter on August 11, 1964, at 2:00 o'clock p.m. did appear in the Probate Division of said Circuit Court of Cook County, Illinois, County Department, and present the application for probate of the said Exhibit "D" to probate and that not only the said Exhibit "D", the same being the spurious Last Will and Testament of William A. Melody, Deceased, but also the said petition were prepared as a part of and in furtherance of a conspiracy on the part of the defendants, Pauline Owens, Alma Allen, S. Edward Bloom, Velma Hoyle and Betty Jean Tewell to perpetrate a fraud upon this Court by inducing it to admit to probate a document which all of them knew on the 11th day of August, 1964, was not a valid Last Will and Testament of William A. Melody, Deceased.

15. That at the time of the preparation of the said petition, herein referred to as Exhibit "E", the said S. Edward Bloom did not fully inform and advise the said John McNeil, Second Vice President for the said The Northern Trust Company, of the matters aforesaid; that said S. Edward Bloom had a duty and obligation as attorney for the said The Northern Trust Company in the presentation of said petition to disclose all of the facts attendant to and in connection with the preparation and [fol. 27] execution of the said Exhibit "D" of which he then had knowledge, and more particularly that said Exhibit "D" was prepared and signatures affixed thereto subsequent to the death of the said William A. Melody; that the said petition, Exhibit "E", was presented to this Court and filed on the 11th day of August, A.D. 1964, and

the said S. Edward Bloom, in so doing and presenting for probate a spurious Last Will and Testament, knowing the same to be spurious, did commit a fraud upon this Court and is guilty, therefore, of contempt.

16. That Pauline Owens, Alma Allen, S. Edward Bloom, Velma Hoyle and Betty Jean Tewell, defendants, have participated in a deliberate attempt to cause the Circuit Court of Cook County, Illinois, County Department, Probate Division, to admit the said spurious Last Will and Testament to probate and to issue letters testamentary to The Northern Trust Company.

17. That none of the agents or representatives of the said The Northern Trust Company had any knowledge of the conspiracy of said Pauline Owens, Alma Allen, S. Edward Bloom, Velma Hoyle and Betty Jean Tewell, defendants herein, in the conduct aforesaid.

18. That the conduct aforesaid of each of the said Pauline Owens, Alma Allen, S. Edward Bloom, Velma Hoyle and Betty Jean Tewell, defendants, tends to bring the administration of the law into disrepute and constitutes a contempt of this Court; that by the conduct of each of the parties they have assailed the dignity and authority of this Court.

19. That the said Velma Hoyle and Betty Jean Tewell did in subscribing their names to the said Exhibit "D" read or had knowledge of the attesting clause of said Ex-
[fol. 28] hibit "D" which is in terms and provisions as follows:

> "We hereby certify that the foregoing instrument consisting of Eight (8) typewritten pages, this being the Seventh page, and continued on the Eighth page, having the signature of the Testator, William A. Melody, upon the margins of the first, second, third, fourth, fifth, sixth and eighth and in the body of the seventh, was at Chicago, Illinois, this 21st day of June,

A. D. 1964, by the said William A. Melody, after same was duly read to him page by page, and in the presence of each and all of us, signed, sealed, published and declared by him to be his Last Will and Testament, and we at his request and in his presence and in the presence of all of us, believing said Testator to be of sound and disposing mind and memory and to have acted freely and voluntarily have hereunto subscribed our names as witnesses."

20. That if notice of these proceedings were given to any party defendant herein, they may flee the jurisdiction and punishment of this Court and that this Court now should in accordance with Section 7 of Chapter 3 of the Probate Act of the State of Illinois entitled, "Administration of Estates", issue an attachment for contempt against Pauline Owens, Alma Allen, S. Edward Bloom, Velma Hoyle and Betty Jean Tewell, defendants, they to receive such punishment upon the hearing had before this Court as the Court may deem meet and proper in the premises.

21. That during the course of these proceedings it may then appear to this Court that there are other defendants [fol. 29] who have participated in the conspiracy and fraud committed upon this Court aforesaid and that such other person or persons who may be guilty thereof should be required to appear before this Court to show cause, if any they have, why they too should not be punished for said contempt.

22. That on the 11th day of August, 1964, at 2:00 o'clock p.m., this Court had set for hearing for admission to probate the Last Will and Testament of William A. Melody, Deceased, dated October 4. 1962, and the Codicil thereto dated August 9, 1963, upon which occasion the said S. Edward Bloom did present the petition and purported Last Will and Testament of William A. Melody dated June 21, 1964, aforesaid, and upon the motion of the said S. Edward Bloom requested that said petition and hearing upon

said spurious Will be set for a date certain by order of this Court and this Court, not being fully advised by the said S. Edward Bloom of the facts hereinabove set forth, did set for hearing for admission to probate said spurious Last Will and Testament of William A. Melody, Deceased, for the 23rd day of September, 1964, at 2:00 o'clock p.m. in Room 646 in the Circuit Court of Cook County, Illinois, County Department, Probate Division, before this Honorable Court.

23. That since the 11th day of August, 1964, this Court having cause therefor did appoint Sam F. Fink as Amicus Curiae to carry on certain investigations and make certain reports to this Court concerning said Exhibit "D", its preparation, execution and filing thereof and all matters pertinent thereto, and since the 11th day of August, 1964, [fol. 30] this Court has had now submitted to it for its consideration oral statements under oath upon examination by the said Amicus Curiae of Sandra Kernene, secretary to S. Edward Bloom, and the admission and voluntary confessions of Velma Hoyle and Betty Jean Tewell, defendants, under oath, which statements, confessions and admissions are factually in accord with the allegations aforesaid in which each of the said parties, Pauline Owens, S. Edward Bloom, Velma Hoyle, Betty Jean Tewell and Alma Allen participated in the preparation, execution and attestation of said Exhibit "D".

24. That since the said attesting witnesses, Velma Hoyle and Betty Jean Tewell, defendants, have now admitted and confessed before this Court their part in the fraud aforesaid, there is no good reason or cause to delay a hearing upon the fraud committed upon this Court and no good reason to delay the hearing now set for September 23, 1964, at 2:00 o'clock p.m. in connection with the admission to probate of the Last Will and Testament of William A. Melody, Deceased, dated October 4, 1962, and the Codicil thereto dated August 9, 1963, and the spurious Last Will and Testament of William A. Melody, Deceased, dated June 21, 1964, and that, therefore, the date to which these matters

have been continued should be re-set and advanced for hearing upon notice being given to each of the parties entitled thereto, towards the end that the question of contempt of the respective defendants herein may be determined and further in order to effect an orderly and proper administration of this estate.

Wherefore, your petitioners pray that this Honorable Court enter an order as follows:

[fol. 31] A. Directing the Clerk of this Court to issue a Writ of Attachment against said Pauline Owens, Alma Allen and S. Edward Bloom, defendants, directed to the Sheriff of Cook County, Illinois, that the Sheriff of said county apprehend the bodies of said Pauline Owens, Alma Allen, and S. Edward Bloom, defendants, if they may be found in said county of Cook and State of Illinois, and then forthwith carry them, the said defendants, before this Court that they may show cause why they should not be adjudged in contempt of this Court and that they may be served with a copy of this petition and order entered pursuant thereto by this Court so that they may have full and proper notice of these proceedings; that a Writ of Attachment issued from the Clerk of this Court to the Sheriff of Cook County and/or Lake County, Illinois, whenever the said Velma Hoyle and Betty Jean Tewell may be found, that the Sheriff of said county or counties may then apprehend the bodies of the said Velma Hoyle and Betty Jean Tewell, if they may be found in the county, the Sheriff thereof to bring them forthwith and carry them before this Court, that they may be secured to show cause why they should not be adjudged in contempt of this Court, and that they may be served with a copy of this petition and order entered pursuant thereto by this Court so that they may have full and proper notice of these proceedings.

B. That such other defendants as may, upon the hearing before this Court, be considered to be in contempt of this Court, that they too may be brought before this Court to

abide the further order and judgment of this Court in these [fol. 32] proceedings, they to be brought before this Court on such notice as this Court may order and direct.

C. That notice be given to all other parties entitled to notice in these proceedings pertaining thereto and that the date to which all matters now pending on petitions filed by Edward Walliser and John McNeil for the appointment of The Northern Trust Company as Executor and in connection with the hearing on the admission to probate of the Last Will and Testament of William A. Melody, Deceased, dated October 4, 1962, and Codicil thereto dated August 9, 1963, and the spurious Last Will and Testament dated June 21, 1964, be re-set for hearing for such other date as this Court may deem meet and proper.

D. That the petition of The Northern Trust Company filed August 11, 1964, by and through S. Edward Bloom be dismissed and for such other relief in that behalf as the Court may deem meet and proper.

E. And for such other and further relief in the premises as this Court may deem meet and proper.

Edward Walliser.
Marie Connolly.

[fol. 33]
State of Illinois,
County of Cook, ss.

Edward Walliser and Marie Connolly, being first duly sworn, on oath depose and says that they have read the above and foregoing Petition, by them subscribed, know the contents thereof and that the same is true.

Edward Walliser.
Marie Connolly.

Subscribed and sworn to before me this 9th day of September, A. D. 1964.

Edward F. Kihm, Notary Public.

(Seal)

State of Illinois,
County of Cook, ss.

Daniel P. Ward, State's Attorney of Cook County, Illinois, by Gerald Mannix, Assistant State's Attorney of Cook County, Illinois, duly authorized in this behalf, being first duly sworn, on oath deposes and says that he has read the above and foregoing Petition, by him subscribed, knows the contents thereof and that the same is true.

Daniel P. Ward, State's Attorney of Cook County
By Gerald J. Manny, Asst. Sts. Atty.

[fol. 34]

Subscribed and sworn to before me this 10th day of September, A. D. 1964.

Edward F. Kihm, Notary Public.

(Seal)

EXHIBIT A TO PETITION

LAST WILL OF WILLIAM A. MELODY

I, William A. Melody, of Chicago, Illinois, make this my Last Will and revoke all former Wills and Codicils by me made.

First: I direct my Executor to pay out of the principal of my estate all funeral expenses, costs of administration including ancillary, costs of delivering bequests and other proper charges against my estate. I further direct my Executor to pay out of the principal of my estate all estate and inheritance taxes, including any interest and penalties thereon, which may be assessed in any way by reason of my death. I waive on behalf of my estate all rights of reimbursement from any person by reason of any payments made pursuant to the provisions of this article.

Second: I give all my tangible personal property, such as clothing, jewelry, personal effects, books, house furnish-

ings, automobiles and other articles of household or personal use or ornament to my niece, Marie Connolly, of Cedar Rapids, Iowa; and my nephew, Edward Walliser, of Chicago, Illinois, to be divided equally between them as they determine, or if they fail to agree upon division of any of such property within six (6) months after my death, my Executor shall sell such property and distribute the pro-
[fol. 35] ceeds thereof equally between them; and if but one of my said niece and nephew survives me, then all to such surviving niece or nephew.

Third: I give to each of my niece, Marie Connolly, and my nephew, Edward Walliser, who shall survive me, an amount equal to one-third (⅓) of the value of my estate as determined for Federal estate tax purposes; provided, however, that if my said niece or nephew predeceases me, then I give the amount which he or she would have received, if living, per stirpes to his or her descendants living at my death.

Fourth: I give the sum of Five Thousand Dollars ($5,000.00) to each of the following persons who shall be living at my death:

(a) Msgr. Leiser, St. Clement's Catholic Church, Chicago, Illinois;

(b) Msgr. Gilligan, St. Mark's Church, St. Paul, Minnesota;

(c) Bishop Hoch, Sioux Falls, South Dakota;

(d) William A. Fletcher, a priest in Collegeville, Purchase, New York;

(e) Bishop Connolly, Fall River, Massachusetts;

(f) My aunt, Margaret Reynolds, Chicago, Illinois;

(g) My former employee, Mrs. Clara Beck, Chicago, Illinois; and

(h) Mrs. Pauline Owens, Chicago, Illinois, if she is in my employ at the time of my death.

Fifth: All the residue of my estate and property, real and personal, wherever situated, including all lapsed legacies, I give in equal shares to my niece, Marie Connolly, and my nephew, Edward Walliser, or all to the survivor of [fol. 36] them living at my death, provided, however, that if my said niece or nephew predeceases me, then I give the share of the residue of my estate which he or she would have received, if living, per stirpes to his or her descendants living at my death.

Sixth: If, after making the gifts under Second of this my Will, my net estate shall be insufficient to pay in full the gifts under Third and Fourth, the gifts under Fourth shall first abate equally and then the gifts under Third, equally.

Seventh: I hereby appoint my nephew, Edward Walliser, Executor of this my Will, and direct that no surety shall be required on his bond for the faithful performance of his duties as such Executor. If for any reason my said nephew fails to become or ceases to act as Executor, then I appoint The Northern Trust Company, an Illinois corporation, of Chicago, Illinois, Executor hereunder.

I give my Executor full power and authority to sell at public or private sale and at such time or times as my Executor in his or its absolute discretion deems best and without order of court any property, real or personal, belonging to my estate. I further authorize my Executor to make division or distribution of my estate in undivided interests or in kind, or partly in cash and partly in kind, and the judgment of my Executor as to values for such purposes shall be binding on all persons. I also give my Executor full power to settle and compound any claims, either in favor of or against my estate, as to my Executor seems best, and for the purposes aforesaid, to execute and deliver all proper and necessary conveyances and to give full receipts and discharges.

[fol. 37] In Witness Whereof, I have hereunto set my hand and seal to this my Last Will, consisting of four (4)

typewritten pages, the following page included, and for the purpose of identification have placed my initials at the foot of each preceding page, all this 4th day of October, A.D. 1962.

.....(Seal)

We hereby certify that the foregoing instrument was on the date thereof read aloud to the Testator by Louis Swidler, his attorney, in the presence of the undersigned witnesses who viewed the same as said Will was being read, all at the request of the said Testator, William A. Melody, who on said date, after hearing the said Will read, signed, sealed, published and declared the same as his Last Will, in our presence, and we at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses thereto; and that we believe the said William A. Melody at the time of his so signing to be of sound mind and memory. The undersigned witnesses at this time of their own knowledge know and understand that the said William A. Melody is blind and that therefore the above precautions were duly taken.

/s/ Mary E. Beller
Residing at 4106 Marine Drive
Chicago 13, Ill.

/s/ Harry E. Sahs
Residing at 1522 Essex Avenue
Chicago 49, Ill.

/s/ Lawrence D. Swidler
Residing at 6549 N. Francisco
Chicago 45, Ill.

[fol. 38]

EXHIBIT B TO PETITION

FIRST CODICIL TO WILL OF WILLIAM A. MELODY

I, William A. Melody, of Chicago, Illinois, declare this to be a codicil to my Will, which bears date of October 4, 1962.

First: I hereby nominate and appoint The Northern Trust Company, an Illinois corporation, of Chicago, Illinois, as Executor of my said Will.

Second: In all other respects, I hereby confirm my said Will and this Codicil.

In Witness Whereof I have hereunto set my hand and seal this 9th day of August, 1963.

..... (Seal)

We Hereby Certify that the foregoing instrument was on the date thereof read aloud to the Testator by Louis Swidler, his attorney, in the presence of the undersigned witnesses who viewed the same as said Codicil was being read, all at the request of the said Testator, William A. Melody, who on said date, after hearing the said Codicil read, signed, sealed, published and declared the same as his First Codicil to his Will, in our presence, and we, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto; and that we believe the said William A. Melody at the time of his so signing, to be of sound mind and memory. The undersigned witnesses at this time, of their own knowledge, know and understand that the said William A. Melody is blind and that, therefore, the above described procedure was taken.

[fol. 39]

/s/ Thomas Kimen Jr.
Residing at 1153 Deerfield Rd.
Deerfield, Illinois

/s/ Patrick A. Bennett
Residing at 1649 W. Touhy Ave.
Chicago 26, Illinois

/s/ Louis Swidler
Residing at 7648 S. Euclid Ave.
Chicago 49, Ill.

Exhibit D—Last Will and Testament of William A. Melody, dated June 21, 1964.

ORDER ENTERED SEPTEMBER 10, 1964

This cause coming on to be heard on the motion of Edward Walliser and Marie Connolly, sole heirs at law of William A. Melody, Deceased, together with Daniel P. Ward, State's Attorney of Cook County in the State of Illinois, for the issuance of Writs of Attachment against Pauline Owens, S. Edward Bloom, Velma Hoyle, Betty Jean Tewell, and Alma Allen, Defendants, and in support thereof presents the petition of Edward Walliser, Marie Connolly and Daniel P. Ward, State's Attorney of Cook County, Illinois, and the Court now being fully advised in the premises,

It Is Hereby Ordered that leave be and is hereby given to Edward Walliser, Marie Connolly and Daniel P. Ward, State's Attorney of Cook County, Illinois, to file their said petition instanter.

It Is Hereby Ordered that a Writ of Attachment issued by the Clerk of this Court, returnable forthwith, directed to the Sheriff of Cook County, Illinois, that the Sheriff of said county apprehend the bodies of said Pauline Owens, [fol. 40] S. Edward Bloom and Alma Allen, defendants, if they may be found in said county of Cook and State of Illinois, and then forthwith carry them, the said defendants, before this Court that they may show cause why they should not be adjudged in contempt of this Court and that

they may be served with a copy of the petition herewith presented this day and order entered pursuant thereto by this Court so that they may have full and proper notice of these proceedings; that a Writ of Attachment issue from the Clerk of this Court directed to the Sheriff of Cook County and/or Lake County, Illinois, wherever the said Velma Hoyle and Betty Jean Tewell may be found, that the Sheriff of said county or counties may then apprehend the bodies of the said Velma Hoyle and Betty Jean Tewell, if they may be found in the county, the Sheriff thereof to bring them forthwith and carry them before this Court, that they may be secured to show cause why they should not be adjudged in contempt of this Court, and that they may be served with a copy of a petition herewith presented this day and order entered pursuant thereto by this Court so that they may have full and proper notice of these proceedings.

Enter:

Robert Jerome Dunne, Judge.

ORDER ENTERED ON SEPTEMBER 10, 1964

This cause coming on to be heard in open Court and the Court being fully advised in the premises,

It is hereby ordered that Sam F. Fink, heretofore appointed amicus curiae, having conducted a partial investigation, file instanter a progress report covering the inves-
[fol. 41] tigation conducted thus far and that he be permitted to hereafter add a transcript of the testimony that was taken in open Court by Velma Hoyle and Betty Jean Tewell as soon as said transcript has been typed up by the Court reporter.

And that he await further directions and instructions from this Court.

ORDER ENTERED ON SEPTEMBER 10, 1964

On motion of Edward L. S. Arkema, attorney for Edward Walliser and Marie Connolly, sole heirs at law of William A. Melody, Deceased,

It Is Hereby Ordered that the file in the above-entitled be and the same is hereby impounded until further order of this Court.

ORDER ENTERED ON SEPTEMBER 11, 1964

This cause coming on to be heard this day upon notice having been duly served, and the Court now having been advised that Velma Hoyle and Betty Jean Tewell, the attesting witnesses to the purported Last Will and Testament of William A. Melody have admitted in open Court that their names were affixed to said purported Last Will and Testament of William A. Melody dated June 21, 1964, subsequent to the death of the deceased, and that in effect the same is a spurious Will and that there is no just cause or reason that there should be any further delay in the hearing on the petition heretofore filed for admission of said purported Last Will and Testament to probate and that the matter, therefore, should be re-set and advanced to an early date for hearing; nevertheless, notice should be given to all parties entitled thereto by Edward L. S. Arkema as attorney for Edward Walliser and Marie Con- [fol. 42] nolly, resetting this cause; and the Court now being otherwise fully advised in the premises,

It Is Hereby Ordered that the hearing on the purported Last Will and Testament of William A. Melody, Deceased, dated June 21, 1964, now set for September 23, 1964, at 2:00 o'clock p.m. be and is hereby re-set for hearing, the same to be heard before this Court in Room 647 on the 17th day of September, 1964, at 2:00 o'clock p.m.; that a copy of this order and a copy of the petition herewith filed this day by Edward Walliser and Marie Connolly and Daniel P. Ward, State's Attorney, be served upon each party entitled thereto so that they may have notice thereof of the matters now pending before this Court.

ORDER ENTERED SEPTEMBER 17, 1964

This cause coming on to be heard on the verified petition of John McNeil, Second Vice President of The Northern Trust Company for admission to probate of the purported Last Will and Testament of William A. Melody, Deceased dated June 21, A.D. 1964, and by the terms of said petition states the date of death of the said William A. Melody as July 6, 1964, at Chicago, Illinois, and said petition prays the appointment of The Northern Trust Company as Executor, and it appearing to the Court that said petition was presented to this Court on August 11, 1964, personally by S. Edward Bloom for admission to probate of the said purported Last Will and Testament of William A. Melody, Deceased; and now upon evidence having been presented this day, the Court finds that the said purported Last Will and Testament of William A. Melody, Deceased, dated the 21st day of June, A. D. 1964, the date of June 21, A. D. [fol. 43] 1964, admittedly being inserted by the said Velma Hoyle, the attesting witness at the request of Pauline Owens and Alma Allen, after July 6, 1964, and that the witnesses affixed their signatures as attesting witnesses after the date of death of the said decedent, which death occurred July 6, 1964, and that, therefore, the signature of William A. Melody to the said purported Last Will and Testament of William A. Melody, Deceased, was forged and accordingly it is a spurious Last Will and Testament; that this Court finds, therefore, according to the testimony presented that the said purported Last Will and Testament of William A. Melody, Deceased, dated June 21, A. D, 1964, was not duly executed and attested according to law in such case made and provided and should not be, therefore, admitted to probate, and the Court now finding that it has jurisdiction over the parties hereto and subject matter hereof.

It Is Hereby Ordered that the purported Last Will and Testament of William A. Melody, Deceased, dated June 21, A. D. 1964 be and is hereby denied admission to probate.

ORDER ENTERED SEPTEMBER 21, 1964

This cause coming on now to be heard, having been continued to the present day hereof, for hearing on the return of Writs of Attachment heretofore issued against Pauline Owens, S. Edward Bloom, Velma Hoyle, Betty Jean Tewell and Alma Allen, respondents, all of whom were released on bond, they to appear before this Court on the 17th day of September, A.D. 1964, at 2:00 o'clock P. M., and it now appearing to this Court that all of said parties respondent upon whom Writs of Attachment have been served aforesaid are present in open court and Velma Hoyle and [fol. 44] Betty Jean Tewell having testified in this cause and certain of the respondents requesting time to plead or answer and the Court now finding that it has jurisdiction over the parties respondent hereto and subject matter hereof, and that this matter should be set for further hearing and disposition for a day certain.

It Is Therefore Ordered that the further hearing on the return of the Rules upon the attachments heretofore served upon each of the respondents, Pauline Owens, S. Edward Bloom, Velma Hoyle, Betty Jean Tewell and Alma Allen, be and are hereby continued to the 27th day of October, A.D. 1964, at 11:30 o'clock A. M., and that each of the said parties respondent are hereby ordered to appear on said day to answer the charges of contempt now pending before this Court, they to show cause, if any there be, why they should not be held in contempt of this Court and punished therefore; and

It Is Further Ordered that Gregory A. Gelderman be and he is hereby appointed Amicus Curiae in the matter of the aforesaid charges of contempt and rules to show cause heretofore entered upon the said respondents; and

It Is Further Ordered that this Order be entered nunc pro tunc as of September 17, 1964 and is further ordered that the subpoena served upon the respondent, S. Edward Bloom stand in full force and effect and that he appear on October 27, 1964 at 11:30 A.M. with the documents set forth in the subpoena.

PETITION OF DANIEL P. WARD, STATE'S ATTORNEY OF COOK COUNTY—Filed on October 21, 1964

[fol. 45] Whereas, it appears to Daniel P. Ward, State's Attorney of Cook County, Illinois, that from an inspection of the Circuit Court Probate Division records, File No. 64 P 6268, and from testimony heard in open court on September 17, 1964 before the Honorable Robert Jerome Dunne, that you S. Edward Bloom did certain acts while engaged in a fiduciary and legal capacity in the above mentioned state.

Your petitioner represents to this Honorable Court, as follows:

1. That one, Wm. A. Melody, while a resident of Cook County, died on the 6th day of July, 1964, in Chicago, Illinois.

2. On information and belief, that subsequent to the death of the said Wm. A. Melody, decedent, a purported Last Will and Testament of the above named decedent dated June 21, 1964 was the subject of a petition for admission to probate before this Honorable Court.

3. That the alleged Last Will and Testament dated June 21, 1964, was filed with the Clerk of this Court on the 9th day of July, 1964.

4. On information and belief, on or about the 14th day of July, 1964, one, Pauline Owens, a practical nurse for the decedent, employed the services of Edward S. Bloom, a duly licensed attorney in the State of Illinois.

5. On information and belief, you, Edward S. Bloom, did on or about the 14th day of July, 1964, did then dictate to one, Sandra Kernene, and cause to be prepared the alleged Last Will and testament of the decedent.

6. On information and belief that on or about the 11th day of August, 1964, you did procure the signature and [fol. 46] acquiescence of one, John McNeil, Second Vice-

president of the Northern Trust Company, named Executor in the spurious document dated June 21st, 1964, to a petition for admission of said document to probate.

7. That Edward S. Bloom, as attorney for the named Executor in the spurious document, had a duty as an officer of this Court, and because of the fiduciary relationship then in existence between the named Executor and attorney, to fully disclose any and all facts and circumstances relative to the execution of the spurious document dated June 21st, 1964.

8. On information and belief that on or about the 9th day of July, 1964, you did then cause to be filed a petition for admission to probate of the spurious document dated June 21st, 1964, but prepared under the direction and control of, among others, one, Edward S. Bloom on or about the 11th day of August, 1964.

9. On information and belief, the petition for admission to probate of the above referred to spurious document dated June 21, 1964 which cause to be filed or filed by Edward S. Bloom contained, among other matters, the following:

"1. William A. Melody, whose place of residence at the time of his death was 2052 Lincoln Park West, Chicago Cook Illinois, died July 6th, 1964, leaving a will dated June, 1964."

10. By information and belief and from an inspection of the records and testimony adduced in the above matter, one, Edward S. Bloom had knowledge as to the sordid circumstances attending the execution of the spurious and false document dated June 21, 1964.

[fol. 47] Wherefore, because the above enumerated circumstances and instances constituted conduct which tended to embarrass or obstruct the Court in the administration of justice, and which brought the administration of law in this Honorable Court into disrespect and therefore Edward

S. Bloom committed a contempt of this Honorable Court and is subject to the punishment of this Court.

Duly sworn by Gerald J. Mannix, jurat omitted in printing.

MOTION OF S. EDWARD BLOOM FILED NOVEMBER 14, 1964 TO STRIKE AND DISMISS PETITION OF DANIEL P. WARD, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS.

Now comes S. Edward Bloom, and in support of his said Motion, respectfully alleges:

1. That each paragraph of the said Petition, other than paragraphs 1, 3 and 7, are predicated upon and are stated as being upon information and belief, and as to paragraphs 1 and 3 the allegations stated therein are general allega-
[fol. 48] tions and not directed against S. Edward Bloom, and as to the allegations of Paragraph 7, those allegations are predicated upon other allegations set forth within the Petition which are predicated upon information and belief.

Hence, all material allegations with respect to the alleged charges are predicated upon information and belief and not upon the personal knowledge of the affiant.

2. That the attestation clause verifying the said Petition is as follows:

"State of Illinois,
County of Cook, ss.

Gerald J. Mannix, being first duly sworn, deposes and says that he is an Assistant State's Attorney of Cook County, familiar with the facts herein, and that the same is true in substance and in fact.

/s/ Gerald J. Mannix

Subscribed and Sworn to before me
this ..... day of November, 1964.

.....
Notary Public"

that said attestation and verification discloses the affiant to be verifying and attesting the truthfulness of the allegations made on information and belief, which is incongruous and irreconcilable.

3. That said Petition is insufficient as a matter of law to sustain a proceeding for contempt of court in that said Petition and the allegations contained therein are predicated and made upon information and belief. It is well established that material allegations in accusation or affidavit charging contempt of court must be on the personal knowledge of affiant.

[fol. 49] 4. That the attesting affidavit of the Petitioner is a misrepresentation and incorrect inasmuch as therein the affiant states that the facts within the said Petition are true in substance and in fact, when in truth the facts recited within the Petition are stated to be only on information and belief and that therefore the affiant could not correctly make such affidavit as in said Petition contained. That said affidavit, to be factually accurate in accordance with the allegations made in said Petition, would have to be additionally stated somewhat as follows: "and that as to those matters based upon information and belief I believe them to be true and correct."

Wherefore, your Respondent, S. Edward Bloom, respectfully moves the Court as follows:

1. To dismiss and strike the said Petition of Daniel P. Ward, State's Attorney of Cook County, Illinois, filed herein on or about November 6, 1964, and to terminate these proceedings under this Petition;

2. That S. Edward Bloom be discharged from any and all charges of contempt heretofore and hereby brought against him in this Court;

3. That S. Edward Bloom, if necessary, have the opportunity to interrogate in Court the Petitioner, Daniel P. Ward, by Gerald J. Mannix, Assistant State's Attorney,

with respect to their knowledge of the truthfulness of the facts alleged within said Petition.

4. That S. Edward Bloom have such other and further relief as to this Honorable Court may seem just and equitable.

AMENDED PETITION OF DANIEL P. WARD—
Filed November 18, 1964

[fol. 50] Whereas, it appears to Daniel P. Ward, State's Attorney of Cook County, Illinois, that from an inspection of the Circuit Court Probate Division records, File No. 64 P 6268, and from testimony heard in open court on September 17, 1964, before the Honorable Robert Jerome Dunne, that you, the said S. Edward Bloom, did certain acts while engaged in a fiduciary and legal capacity in the above mentioned estate.

Your petitioner represents to this Honorable Court, as follows:

1. That one, William A. Melody, while a resident of Cook County, died on the 6th day of July, 1964, in Chicago, Illinois.

2. On information and belief, that subsequent to the death of the said William A. Melody, decedent, a purported Last Will and Testament of the above named decedent dated June 21, 1964, was the subject of a petition for admission to probate before this Honorable Court.

3. That the alleged Last Will and Testament dated June 21, 1964, was filed with the Clerk of this Court on or about the 20th day of July, 1964.

4. On information and belief, on or about the 14th day of July, 1964, one, Pauline Owens, a practical nurse for the decedent, employed the services of S. Edward Bloom, a duly licensed attorney in the State of Illinois, to dictate, prepare and draft the said spurious Last Will and Testament of William A. Melody dated June 21, 1964.

5. On information and belief, you, S. Edward Bloom, did on or about the 14th day of July, 1964, did then dictate to one, Sandra Kernene, and cause to be prepared the alleged Last Will and Testament of the decedent.

[fol. 51] 6. On information and belief that on or about the 11th day of August, 1964, you did procure the signature and acquiescence of one, John McNeil, second Vice President of The Northern Trust Company, named Executor in the spurious document dated June 21st, 1964, to a petition for admission of said document to probate.

7. That S. Edward Bloom, as attorney for the named Executor in the spurious document, had a duty as an officer of this Court, and because of the fiduciary relationship then in existence between the named Executor and attorney, to fully disclose any and all facts and circumstance then known to him relative to the preparation, drafting and execution of the spurious document dated June 21, 1964.

8. On information and belief that on or about the 7th day of August, 1964, you did then cause to be filed a petition for the admission to probate of the said spurious document dated June 21, 1964, as the Last Will and Testament of William A. Melody, Deceased, and that you did prepare and present said petition with your name endorsed thereon as attorney for the designated Executor, The Northern Trust Company, for probate of the said spurious Last Will and Testament to the Circuit Court of Cook County, Illinois, County Department, Probate Division, on the 11th day of August, 1964, and that you did then and there move that the said spurious document be set down for hearing upon a day certain and that the Court on said motion made by you, the said S. Edward Bloom, did order and direct a hearing upon said spurious document be had on the 23rd day of September, 1964, at 2:00 o'clock p.m. and that notice thereof be sent to all proper parties.

[fol. 52] 9. On information and belief, the petition for admission to probate of the above referred to spurious

document dated June 21, 1964, which was caused to be filed or filed by S. Edward Bloom contained, among other matters, the following:

> "1. William A. Melody, whose place of residence at the time of his death was 2052 Lincoln Park West, Chicago Cook Illinois, died July 6th, 1964, leaving a will dated June, 1964."

10. By information and belief and from an inspection of the records and testimony adduced in the above matter, one, S. Edward Bloom had knowledge as to the sordid circumstances attending the execution of the said spurious and false document dated June 21, 1964.

Wherefore, because the above enumerated circumstances and instances constituted conduct which tended to embarrass or obstruct the Court in the administration of justice, and which brought the administration of law in this Honorable Court into disrespect, therefore S. Edward Bloom committed a contempt of this Honorable Court and is subject to the punishment of this Court.

Daniel P. Ward, State's Attorney of Cook County,
By: Gerald J. Mannix, Assistant State's Attorney.

[fol. 53] *Duly sworn to by Gerald J. Mannix, jurat omitted in printing.*

NOTICE OF GERALD MANNIX, ASSISTANT STATE'S ATTORNEY OF COOK COUNTY—Filed November 19, 1964

On November 19, 1964, at 10:45 o'clock a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Robert Jerome Dunne, in Room 647, County Courthouse, 118 North Clark Street, Chicago, Illinois, or any judge sitting in his stead, and shall move as follows:

1. That leave be given Daniel P. Ward, State's Attorney of Cook County, Illinois, to file affidavits of Sam F. Fink, Marilynne M. Olsen and Marvin Juron instanter in support of the Amended Petition heretofore filed, copies of which affidavits are herewith served upon you.

[fol. 54] 2. That leave be given Daniel P. Ward, State's Attorney of Cook County, Illinois, to file Amended Petitions instanter.

3. And for such other and further relief in the premises as to the Court may seem meet and just.

ORDER ENTERED ON NOVEMBER 19, 1964

The cause coming on to be heard on motions of Edward Walliser and Marie Connolly and Daniel P. Ward, State's Attorney, and the Court being advised in the premises,

It is hereby ordered that said motions be and are hereby entered and the motions served by and for S. E. Bloom and all such motions be set for hearing at 2 P.M. on Nov. 20, 1964 without further notice.
Nov. 19, 1964.

Enter:

Robert Jerome Dunne, Judge.

MOTION OF S. EDWARD BLOOM FILED NOVEMBER 20, 1964 TO INTERROGATE GERALD J. MANNIX, EDWARD WALLISER AND MARIE CONNOLLY

To the Honorable Robert Jerome Dunne, Presiding Judge of said Court:

Now comes S. Edward Bloom, and in support of his said Motion, respectfully alleges:

1. That he is the above captioned Defendant in this matter.

2. That Gerald J. Mannix, Assistant State's Attorney of Cook County, Illinois, and Edward Walliser and Marie

Connolly have heretofore filed Petitions with this Court in the above entitled cause, directed against S. Edward Bloom, under the caption of "The People of the State of Illinois vs. S. Edward Bloom, Defendant," and that each of the [fol. 55] aforesaid Petitioners has made certain allegations in their respective said Petitions concerning alleged misbehavior and alleged acts of S. Edward Bloom and they have stated that they have personal knowledge of the truthfulness of the allegations.

Wherefore and pursuant to the above, S. Edward Bloom prays for and moves this Honorable Court as follows:

1. That he be granted, through his attorneys, Herbert F. Friedman and Michael M. Kenyon, the right to interrogate in open court on the date of the hearing on this Motion or at such early date as this Honorable Court shall set, the three said Petitioners, Gerald J. Mannix, Edward Walliser and Marie Connolly, with respect to their individual knowledge of the alleged facts and allegations set forth within their respective said Petitions, and from what sources and persons, if any, they acquired the alleged knowledge, information and belief of the alleged facts and allegations set forth within their respective Petitions.

2. That this Honorable Court grant unto S. Edward Bloom such other and further relief in the premises as to this Honorable Court shall seem just and equitable.

ORDER ENTERED ON NOVEMBER 20, 1964

This cause coming on to be heard on the motion of Daniel P. Ward, State's Attorney of Cook County, Illinois, by Gerald J. Mannix, Assistant State's Attorney, notice having been duly served, for leave to file instanter Amended Petitions in the above-entitled proceedings, and further for leave to file the affidavits of Sam F. Fink, Marilynne M. Olsen and Marvin Juron in support of said Amended Petition, and the Court being fully advised in the premises

[fol. 56] and finding it has jurisdiction over the parties hereto and subject matter hereof,

It Is Hereby Ordered as follows:

1. That leave be and is hereby given Daniel P. Ward, State's Attorney of Cook County, Illinois, to file his Amended Petitions instanter, and that the Respondents-Defendants, Pauline Owens and S. Edward Bloom are hereby given leave to file Their plea or answer thereto within 10 days from the date hereof.

2. That leave be and is hereby given Daniel P. Ward, State's Attorney of Cook County, Illinois, to file the Affidavits of Sam F. Fink, Marilynne M. Olsen and Marvin Juron instanter in support of the Amended Petitions heretofore filed.

AFFIDAVIT OF SAM F. FINK—Dated November 20, 1964

Sam F. Fink, being duly sworn, on oath deposes and says:

1. That he was employed to make an investigation and was appointed as Amicus Curiae in connection with the above entitled estate; that in the performance of his said duties he conducted an investigation into matters concerning the preparation and purported execution of the alleged Last Will and Testament of the late William A. Melody dated June 21, 1964; that in this behalf affiant states further as follows:

2. That on August 26, 1964 Sandra Kernene voluntarily, accompanied by affiant, appeared in open court before the Honorable Judge Robert Jerome Dunne and stated under oath in open court before the Honorable Judge Robert Jerome Dunne her acts in preparation of the alleged Last Will and Testament of the late William A. Melody dated [fol. 57] June 21, 1964; that among other things Sandra Kernene stated she worked for S. Edward Bloom, an at-

torney with offices at 188 West Randolph Street, Chicago, Illinois, for the past three years, during which period of time she worked either part time or full time; that during the month of July, 1964 she worked for S. Edward Bloom on the 2nd day of July and did not work for him again until July 14, 1964; that she did not work for S. Edward Bloom after July 14, 1964; that on July 14, 1964 her acts and efforts in the office of S. Edward Bloom were solely in connection with the taking of dictation from S. Edward Bloom covering the terms to be typed in the Last Will and Testament of William A. Melody and the typing of same; that she did nothing else that day other than her work in connection with the said Will; that when she was called into the private office of S. Edward Bloom by him there was another person present in Mr. Bloom's office who Sandra Kernene later identified as Pauline Owens; that Pauline Owens remained in the office all the time S. Edward Bloom was dictating the provisions of the said Last Will and Testament of William A. Melody to Sandra Kernene and that during this time S. Edward Bloom conferred with Pauline Owens about the terms and provisions in the Will; that Sandra Kernene, after having taken the dictation, went to the outer office and then and there typed the alleged Last Will and Testament of William A. Melody as dictated to her by S. Edward Bloom; that the said Last Will and Testament of William A. Melody was turned over by Mr. Bloom to Pauline Owens and that Pauline Owens took same with her out of the office; that Mrs. Kernene actually saw Mrs. Owens put the Last Will and Testament of William A. Melody aforesaid in her purse as she came out of the office.

[fol. 58] 3. That on September 4, 1964 your affiant received a special delivery letter signed by both Velma R. Hoyle and Betty Jean Tewell, who were the attesting witnesses to the alleged Last Will and Testament of William A. Melody dated June 21, 1964, wherein a confession was made by both of these parties to the effect that they never

actually saw the late William A. Melody sign the alleged Last Will and that they did not ever know William A. Melody; that in this same confession there was contained the statement that Pauline Owens was the person who requested them to act as attesting witnesses to said alleged Last Will and Testament of the late William A. Melody for presentation to the Circuit Court of Cook County, County Department, Probate Division; that said memorandum of admission dated September 3, 1964 is hereto attached and incorporated herein as Exhibit "A".

4. That on September 8, 1964 Velma R. Hoyle voluntarily appeared before the Honorable Robert Jerome Dunne and under oath stated to the court that she had known Pauline Owens for about two years; that Pauline Owens called Velma Hoyle on the phone and inquired as to whether or not she would witness a document; that Mrs. Hoyle stated she would witness a document; that some time between the 6th and 18th of July, 1964 Velma Hoyle saw for the first time the document purporting to be the Last Will and Testament of William A. Melody dated June 21, 1964; that this document was delivered to her home by Alma Allen; that on the day prior to the delivery of this document Pauline Owens phoned Velma Hoyle on two or three occasions, at which times Pauline Owens stated that a document [fol. 59] would be delivered to her the following day for her signature and for the signature of another person; that Pauline Owens stated to Velma Hoyle that it would be alright for Velma Hoyle to sign the document and also to get someone else to witness it; that Pauline Owens further stated Mr. Bloom said it would be alright for Velma Hoyle to sign it; that Velma Hoyle and her granddaughter, Mrs. Tewell, signed the document on that day and that Mrs. Hoyle also added the date of June 21st in a space which was left blank for the insertion of the date June 21st; that Pauline Owens stated to Velma Hoyle she was to put in the date of June 21st; that Pauline Owens gave Mrs. Hoyle pictures of William A. Melody as well as a drawing

of his apartment to prepare Mrs. Hoyle for possible questions by different attorneys in case she was asked to describe the apartment or identify William A. Melody; that Pauline Owens also told Velma Hoyle to state that William A. Melody made certain remarks during the reading of the Will and told her further that Velma Hoyle was to say that William A. Melody indicated his understanding of the Will by raising his hand; that Pauline Owens paid Velma Hoyle $100.00 in cash and that Pauline Owens thereafter mailed $200.00 in cash to Velma Hoyle and promised her an additional $1,000.00 if the Will were admitted to probate; that Pauline Owens also warned Velma Hoyle after all of the parties learned that an investigation was being conducted in connection with this alleged Will by telling her, and your affiant quotes, "You better beware, you better watch out for your granddaughter and her family."

5. That on September 8, 1964 Betty Jean Tewell, one of the witnesses to the alleged Last Will and Testament [fol. 60] of William A. Melody dated June 21, 1964, also voluntarily appeared before the Honorable Judge Robert Jerome Dunne in open court and under oath made statements in said court as follows: That she was the granddaughter of Velma Hoyle and that she first received word concerning a document which was going to be delivered to her for the purpose of affixing her signature some time between the 6th and 18th of July, 1964; that she never saw William A. Melody and that she was told to say what her grandmother had heretofore stated.

Further Affiant Sayeth Not.

Sam F. Fink.

Subscribed and Sworn to before me this 20 day of November, A.D. 1964.

Josephine M. Anders, Notary Public.

AFFIDAVIT OF MARILYNNE M. OLSEN—Dated November 18, 1964

Marilynne M. Olsen, being first duly sworn, on oath deposes and says:

1. That she is a legal secretary employed by Edward L. S. Arkema, attorney at law, with offices at 100 North LaSalle Street, Chicago, Illinois, and was so employed by the said Edward L. S. Arkema, on August 26, 1964.

2. That from August 24, 1964 to and including August 31, 1964, Edward L. S. Arkema was out of the city of Chicago, and on August 25, 1964, affiant received a telephone call from one Sam S. Fink advising affiant that one Sandra Kernene would appear before the Honorable Robert Jerome Dunne on August 26, 1964, at the hour of 11:30 o'clock A.M.

[fol. 61] 3. In the absence of the said Edward L. S. Arkema, affiant appeared in open court before the Honorable Robert Jerome Dunne on August 26, 1964, at the hour of 11:30 o'clock A.M., at which time the said Sandra Kernene testified in open court as follows:

A. That she had been employed by one S. Edward Bloom, attorney at law, with offices at 188 West Randolph Street, Chicago, Illinois, as a legal secretary in the past three years; that she worked full time for said attorney during the month of June, 1964 up to July 2nd, 1964, when she ceased working for him.

B. That she received a telephone call from the said S. Edward Bloom on July 10, 1964, requesting her to return to work and it was agreed that she would return to work on July 13, 1964. That she did not return to work for the said S. Edward Bloom until July 14, 1964, arriving at Mr. Bloom's office between 12:00 and 12:30 P.M.

That at approximately 1:00 P.M. on July 14, 1964, she was called into the said S. Edward Bloom's private office, at which time there was a colored woman present, and the said S. Edward Bloom informed her that he was going to

dictate a will, and gave her the name of the decedent, William A. Melody; that she had not typed any wills prior to that time involving the name of William Melody. That after the said S. Edward Bloom started to dictate, the woman in the office gave him some sheets of paper that he referred to; that during the course of the dictation, the said S. Edward Bloom did confer with the woman seated in his office, asking for the correct spelling of name or of first names, which the said woman gave to him after re- [fol. 62] ferring to a legal document of the type which is used in estates. That the said S. Edward Bloom concluded his dictation to her and turned over the sheets of paper which the said woman had given to him for reference in case of spelling or for verification of amounts on money which she, the said Sandra Kernene, then took to her desk and proceeded to type the will; the notes on the sheets of paper which were turned over to her were not in the handwriting of the said S. Edward Bloom. The said S. Edward Bloom inquired of the said Sandra Kernene how long it would take to type the will and she told him approximately 3:00 o'clock P.M.; the person seated in his office left and returned at 3:00 o'clock P.M. She, the said Sandra Kernene, finished typing the Will and placed the same, together with the sheets of paper above referred to, on the said Mr. Bloom's desk, the month and day were left blank on the said Will pursuant to the instructions of the said S. Edward Bloom.

D. The Will was then handed to the said woman by the said S. Edward Bloom and the said woman took the Will with her. The woman returned to the office of the said S. Edward Bloom between 4:00 and 4:30 o'clock P.M. on July 14, 1964, at which time the said woman was ushered into his inner office and the said Sandra Kernene was called into his office, at which time he, the said S. Edward Bloom, informed Sandra Kernene that there were some changes to be made and asked her if she would stay late and finish the will that evening, and she informed him that she would

have to check with her husband first, which she did. Her husband informed her that he had a check to give to her [fol. 63] and asked that she meet him downstairs in front of the building at 6:00 o'clock P.M., which she did, and he turned over a check to her, said check being from Yarnall-Todd Chevrolet, her husband's employer, the check representing commissions due her husband, she took the check, gave him a dollar and proceeded back to the offices of the said S. Edward Bloom, to finish the revisions to the Will, which consisted of some increases in some of the amounts and some additional names. One of the changes was in the bequest to Pauline Owens, which was changed from $20,000.00 to $40,000.00 and the only other one that she, the said Sandra Kernene, can recall was one change from $40,000.00 to $70,000, but she did not recall the name. The revisions to the Will were given to her by the said S. Edward Bloom on one of the copies of the Will that she had typed, on which some of the numbers were gone over in ink to be changed. She, the said Sandra Kernene, retained the notebook in which she made her stenographic notes when this Will was first dictated to her, which she left at the said office. It is not the practice of the secretaries employed in the office of the said S. Edward Bloom to discard their stenographic notebooks after the same have been used.

E. She, the said Sandra Kernene, concluded typing the Will at approximately 7:00 o'clock P.M. and brought the Will into the said S. Edward Bloom page by page as she finished the typing. The same woman was seated in his office as the said Will was being assembled. The Will was then given to the said woman, and as she came out of the inner office of the said S. Edward Bloom she was putting it into her purse. As the said woman was leaving the office of the S. Edward Bloom, he asked her if she would want him to put in a clause to the effect that Mr. Melody was [fol. 64] blind and that the Will was being read to him, and the said woman stated that it was not necessary.

4. Affiant further states that the said Sandra Kernene positively identified the document shown to her in open

court as the Will of William A. Melody which she, the said Sandra Kernene, typed from transcription of dictation given to her by the said S. Edward Bloom on July 14, 1964, a copy of which document is attached hereto, incorporated herein and made a part hereof as Exhibit "A".

5. Further affiant sayeth not.

Exhibit A to Olsen affidavit being the will of William A. Melody dated June 21, 1964.

AFFIDAVIT OF MARVIN JURON

To: The Honorable Robert Jerome Dunne, Presiding Judge of said Court:

Marvin Juron, being first duly sworn, on oath deposes and says;

1. That he is an attorney and counsellor at law duly licensed to practice in the State of Illinois, and is a member of the law firm of Lelivelt, Swidler & Juron, with offices at 33 North La Salle Street, Chicago, Illinois.

2. That prior to the 11th day of August, 1964 a purported Last Will and Testament of William A. Melody, dated June 21, 1964, had been filed in these proceedings and on the 11th day of August, 1964, at about 2:00 o'clock P.M., one S. Edward Bloom, Defendant-Respondent herein, personally appeared before this Court and did present a petition, a photostatic copy of which is attached hereto, incorporated herein and made a part hereof as Exhibit "A", to this Court and did then and there move that the said purported Last Will and Testament dated June 21, 1964, be [fol. 65] set down for hearing upon a date certain for its admission to probate, at which time this affiant was present in open court.

3. That upon the said petition, a copy of which is attached hereto as Exhibit "A", presented in open court by

the said S. Edward Bloom and motion made in that behalf by him, the said purported Last Will and Testament of William A. Melody, Deceased, was set down for hearing by order of Court on the 23rd day of September, 1964, at 2:00 o'clock P.M.; that said hearing was subsequently, on September 11, 1964, advanced to September 17, 1964, and upon said hearing, said purported Will dated June 21, 1964 was determined by the Court to be improper and was denied admission to probate.

Marvin Juron.

Subscribed and Sworn to before me this 2nd day of November, 1964.

Laurie Brodkin, Notary Public.

[fol. 66]

(See opposite) ☞

Estate of
WILLIAM A. MELODY,
Deceased

No64 P 06268
Docket 669
Page 506

Hearing on petition set for
Sept 23rd 19 64
2:00 P.m. Room 646
County Courthouse,
118 N. Clark St., Chicago.

_____ on oath states that he is a Second Vice President an Assistant Secretary of The Northern Trust Company and is authorized to execute this petition:

1. WILLIAM A. MELODY, whose place of residence at the time of death was 2052 Lincoln Park West, Chicago (Address) (City) Cook (County) Illinois (State), died July 6th, 19 64, at Chicago, Illinois (City and State), leaving a will dated June 19 64

2. The approximate value of the real and personal estate of the testator in this state is:

Personal estate $600,000.00 Real estate $ None

3. The names and post-office addresses of the testator's heirs, legatees and devisees are (list heirs first):

Name	Relationship	Over 21	Under 21	Post-office address (if unknown, so state)
see attached exhibit				

4. The testator nominated as executor the following, qualified and willing to act:

Name: THE NORTHERN TRUST COMPANY — Post-office address: 50 S. LaSalle Street, Chicago, Ill.

Petitioner asks that the will be admitted to probate and that letters testamentary issue.
Petitioner asks for the appointment of the following as appraiser, qualified to act:

Name S. EDWARD BLOOM
Attorney for petitioner
Address 188 W. Randolph Street
City Chicago, Illinois 60601
Telephone De. 2-2922

John McNeil
Second Vice President - Assistant Secretary
THE NORTHERN TRUST COMPANY
50 South La Salle St., Chicago, Illinois 60690

Signed and sworn to before me August 7 19 64
Gabriel Schaefer
Notary Public
My commission expires February 6, 1968

The undersigned hereby accepts the office of executor, as prayed in the within petition, if so appointed by the Circuit Court of Cook County, Illinois.

THE NORTHERN TRUST COMPANY

By _____
Second Vice President - Assistant Secretary

If a consul or consular agent is to be notified, name country: _____

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NEST 27 COMPARED

Name [fol. 67]	Relationship	Heir-H Legatee-L Devisee-D	Minor-M Incompetent-I	Post-office address
Edward Leiser	None	L		642 W. Deming Place, St. Clement's Church, Chicago, Ill.
Father Wm. A. Fletcher	"	L		Manhattansvill College, Purchase, N. Y.
Rev. F. J. Gilligan	"	L		2001 Dayton Ave., St. Paul, Minn.
Bishop L. Hock	"	L		423 N. Duluth Ave., Sioux Falls, So. Dakota
Bishop Shanck	"	L		2215 E. 2nd St., Duluth, Minn.
Jean Hock	"	L		423 N. Duluth Ave., Sioux Falls, So. Dakota
Bishop Connelly	"	L		394 Highland Ave., Fall River, Mass.
Eve Weeks	"	L		1312 Walsh St., Apt. 42-D Coral Gables, Fla.
Clara Beck	"	L		5046 N. Winchester, Chicago, Ill.
Pauline Owens	"	L		3926 W. Wilcox Ave., Chicago, Ill
Susie Harris	"	L		3637 Flow Ave., Miami, Fla.
Mrs. Ray Gibbia	"	L		220 Pleasant St., Cl[illegible] Ill.
William King	"	L		1344 19th, Gulf Port, Miss.
Eddie McCoy	"	L		3224 Fulton St., Chicago, Ill.
Marie Connelly	Niece	L+M		319 -19th St. S.E., Cedar Rapids, Iowa
Edward Wallizer	Nephew	L+M		7301 S. Homan Ave., Chicago, Ill.
Frank Fite, Jr.	Nephew	L		406 Avoca Rd., Nashville, Tenn.
Eileen Connelly	None	L		318-19th St., S.E. Cedar Rapids, Iowa
Edna Fite	sister-in-law	L		406 Avoca Rd., Nashville, Tenn.
Margaret Fite	niece	L		406 Avoca Rd., Nashville, Tenn.
Jimmy Fite	nephew	L		406 Avoca Rd., Nashville, Tenn.
Helen Keegan	sister-in-law			7203 N. Hamilton, Chicago, Illinois
Margaret Reynolds	aunt	L		10760 Beasley, Chicago, Ill.
Harry Reynolds	cousin	L		455 W. 144th St., Riverdale, Ill.
Frank Reynolds	cousin	L		10780 Beasley, Chicago, Ill.
Alma Allen	none	L		1285 Washburn Ave., Apt. B, Chicago, Ill.
Marie Fahey	cousin	L		c/o Harry Fahey, 455 W. 144th St., Riverdale, Ill.
Dr. Charles Bebar	None	L		Huntington Bldg., Miami, Fla.
Ted Sodowski	None	L		2050 Lincoln Park West, Receiving Room, Chicago, Ill.
Eunice Liberty	None	L		1711 N.W. 42nd Terrace, Miami, Fla.
Kay Bowman	None	L		401 Fullerton Av., Chicago, Ill.
Mary Bowman	None	L		401 Fullerton Av., Chicago, Ill.
George Levitt	None	L		205 Wacker Dr., Chicago, Ill.
Bernice Rummie	None	L		112 N. Snelling Ave., St. Paul, Minn.
Dr. Collin Swords	None	L		Huntington Bldg., Miami, Fla.

[fol. 68]

MOTION OF S. EDWARD BLOOM FILED NOVEMBER 30, 1964 TO STRIKE AND DISMISS AMENDED PETITION OF DANIEL P. WARD, STATE'S ATTORNEY OF COOK COUNTY, ILLINOIS

To the Honorable Robert Jerome Dunne, Presiding Judge of said Court:

Now comes S. Edward Bloom, and in support of his said Motion, respectfully alleges:

1. That each paragraph of the said Amended Petition, other than paragraphs 1, 3 and 7, are predicated upon and are stated as being upon information and belief, and as to paragraphs 1 and 3 the allegations stated therein are general allegations and not directed against S. Edward Bloom, and as to the allegations of Paragraph 7, those allegations are predicated upon other allegations set forth within the Amended Petition which are predicated upon information and belief.

Hence, all material allegations with respect to the alleged charges are predicated upon information and belief and not upon the personal knowledge of the affiant.

2. That said Petition is insufficient as a matter of law to sustain a proceeding for contempt of court in that said Amended Petition and the allegations contained therein are predicated and made upon information and belief. It is well established that material allegations in accusation or affidavit charging contempt of court must be on the personal knowledge of affiant.

Wherefore, your Respondent, S. Edward Bloom, respectfully moves the Court as follows:

1. To dismiss and strike the said Amended Petition of Daniel P. Ward, State's Attorney of Cook County, Illinois, filed herein on or about November 20, 1964, and to termi-
[fol. 69] nate these proceedings under this Amended Petition;

2. That S. Edward Bloom be discharged from any and all charges of contempt heretofore and hereby brought against him in this Court;

3. That S. Edward Bloom, if necessary, have the opportunity to interrogate in Court the Petitioner, Daniel P. Ward, by Gerald J. Mannix, Assistant State's Attorney, with respect to his knowledge of the truthfulness of the facts alleged within said Amended Petition, and other Petitions.

4. That S. Edward Bloom have such other and further relief as to this Honorable Court may seem just and equitable.

IN THE CIRCUIT COURT OF COOK COUNTY

ILLINOIS COUNTY DEPARTMENT

PROBATE DIVISION

No. 64 P 6268

Docket 669

Page 506

Estate of WILLIAM A. MELODY.

ORDER ENTERED AND FILED JANUARY 19, 1965

On motion of the respondent defendants, S. Edward Bloom and Pauline Owens,

It is hereby ordered that the said Respondents, by their respective counsel, be and they are hereby given leave to examine the entire file in this cause and the exhibits therein, and that the Clerk of this Court shall make the said file available to the aforesaid counsel forthwith.

Enter:

Robert James Dunne, Judge.

[fol. 70]

ORDER ENTERED ON JANUARY 20, 1965

This matter coming on to be heard upon the motion of S. Edward Bloom, respondent, to strike and dismiss the heretofore filed Amended Petition of the People of the State of Illinois, to find the said respondent in contempt of court, and the Court having heard arguments in support of and against the said motion;

It Is Hereby Ordered that the said motion of S. Edward Bloom to strike and dismiss the said Amended Petition of the People of the State of Illinois, be and the same is hereby denied; and

It Is Further Ordered that a rule to show cause be and the same is hereby entered against S. Edward Bloom as to why he should not be punished for contempt of this Court, and the said rule is made returnable February 1, 1965 at 10:00 A.M.; and

It Is Further Ordered that leave be and the same is hereby given to the said S. Edward Bloom, as respondent, to answer the said Amended Petition of the People of the State of Illinois, within five (5) days from the date hereof; and

It Is Further Ordered that the hearing on the said Amended Petition of the People of the State of Illinois, filed against the said S. Edward Bloom, as respondent, and the Answer, if any, of the said S. Edward Bloom be and the same is hereby set for February 1, 1965 at 10:00 A.M.

ORDER ENTERED ON JANUARY 20, 1965

This matter coming on to be heard upon the motion of S. Edward Bloom and Pauline Owens, as respondents, to strike and dismiss the Amended Petitions of the People of the State of Illinois to find the said respondents in contempt [fol. 71] of this Court, and the said S. Edward Bloom and

Pauline Owens, by their respective attorneys, orally moving the Court to deny Gregory A. Gelderman heretofore appointed Amicus Curiae, the right to participate as Amicus Curiae in the matter of the hearing of the said Amended Petitions of the People of the State of Illinois, and the Court having heard counsel for the said respondents in support of the said oral motion;

It Is Hereby Ordered that the said oral motions of S. Edward Bloom and Pauline Owens and each of them, be and they are hereby denied; and

It Is Further Ordered that the said Gregory A. Gelderman, as Amicus Curiae, is hereby directed to continue to act as such under the order of his appointment; and

It Is Further Ordered that this order be and the same is hereby entered nunc pro tunc as of January 12, 1965.

ORDER ENTERED ON JANUARY 20, 1965

This matter coming on to be heard upon the Court's own motion;

It Is Hereby Ordered that hearing on the Amended Petition as amended, of Edward Walliser and Marie Connally, against Pauline Owens, S. Edward Bloom, Velma Hoyle, Betty Jean Tewell and Alma Allen, as respondents-defendants, be and the same is continued generally to be brought up on notice at such time as the Court may order and direct.

PETITION OF S. EDWARD BLOOM FILED JANUARY 19, 1965

That this Court entered an Order on January 19, 1965, granting leave to the respondent-defendants and their attorneys to examine the entire Court file in this above en- [fol. 72] titled cause on said January 19, 1965, and said S. Edward Bloom's and Pauline Owens' attorneys examined the file and now advise the Court that it is their opinion

that the Court files that were given them did not contain all papers, documents, affidavits, investigation reports and exhibits properly being and comprising a part of the Court file and most specifically the investigation report and statements of all alleged witnesses;

Your petitioner prays that this Honorable Court allow said respondent-defendants and their attorneys in conformity with the Court's said Order of January 19, 1965 to examine the entire Court file including the investigation reports and statements of all alleged witnesses.

MOTION OF S. EDWARD BLOOM FILED JANUARY 28, 1965 TO STRIKE AFFIDAVITS

To the Honorable Robert Jerome Dunne, Presiding Judge of said Court:

Now comes S. Edward Bloom, and in support of his said Motion alleges as follows:

1. That the Affidavits of Sam F. Fink and Marilynne Olsen as in this caption referred to consist of multiple statements and allegations of pure hearsay intended for the apparent purpose of supplying alleged material allegations missing in the body of the Amended Petition of Daniel P. Ward of about November 20, 1964, which deficiency of material allegations was propounded by S. Edward Bloom in his previously filed Motion to strike and dismiss Amended Petition of Daniel P. Ward, State's Attorney of Cook County, Illinois, filed in this Court on or about November 20, 1964, and as such should not be allowed to stand in support of said Amended Petition.

[fol. 73] 2. That all of said three affidavits, Sam F. Fink's, Marvin Juron's and Marilynne M. Olsen's, do not properly support or in any way contribute to the personal knowledge of the affiant of and under said Amended Petition of the State's Attorney, and it is well established that material allegations in accusation or affidavit charging contempt

of Court must be on the personal knowledge of the affiant, which under said Amended Petition is the State's Attorney of Cook County by Gerald J. Mannix, Assistant State's Attorney.

Wherefore, your defendant, S. Edward Bloom, prays that this Honorable Court strike the said affidavits heretofore filed in this cause in support of the Amended Petition of Daniel P. Ward, State's Attorney of Cook County, Illinois, on or about November 20, 1964 for the reasons hereinbefore set forth and stated.

PETITION OF S. EDWARD BLOOM—Filed January 28, 1965

To the Honorable Robert Jerome Dunne, Judge of said Court.

Now comes your petitioner, S. Edward Bloom, and states as follows:

1) That upon information and belief, your petitioner states that the State's Attorney and or his Office of Cook County, Illinois has files, evidence and information pertaining to matters other than the subject matters involved in this above captioned contempt proceeding with regard and respect to Sandra Kernene, alleged witness in this cause, who is also known as Sandra O'Brien, Lynn O'Brien and Lynn Kernene, and also with regard and respect to Alma Allen, another respondent-defendant in these contempt [fol. 74] proceedings, which said files, information and evidence is and would be favorable to your petitioner, S. Edward Bloom, who hereby requests same, inasmuch as said files, information and evidence is material as to the guilt or innocence of your petitioner in this cause having a direct bearing on the credibility of any testimony of said Sandra Kernene and Alma Allen which may be given and had herein.

2) That the aforesaid request and this Petition is predicated on the Law and on the Law set forth and stated in

Brady vs Maryland, 373 U.S. 83, decided May 13, 1963 by the United States Supreme Court as follows:

a) "Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

b) "A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice even though his action is not the result of guile."

and is further predicated on the statement of Law and good common sense in Barbee vs Warden, Maryland Penitentiary, 331 Fed. 2d 842, decided April 29, 1964 by the United States Court of Appeals, Fourth Circuit as follows:

"Where there is substantial room for doubt as to prosecution's duty to disclose evidence that may reasonably [fol. 75] be considered admissible and useful to defense, the prosecution is not to decide for court what is admissible or for the defense what is useful."

Wherefore, your petitioner, S. Edward Bloom, defendant herein, prays that this Honorable Court order the State's Attorney of Cook County, Illinois to furnish to your petitioner within two days hereof the files, evidence and information heretofore in this petition by him requested, and for such other and further relief as this Court may feel just.

ORDER ENTERED JANUARY 29, 1965

This matter coming to be heard on the motion of S. Edward Bloom to strike and dismiss the heretofore filed affi-

davits in support of the People of the State of Illinois' Amended Petition directed against one, S. Edward Bloom, and filed on the 20th day of November, 1965, and all parties having been present in open court, and the court being fully advised in the premises;

It Is Hereby Ordered, Adjudged and Decreed:

1. That the motion of S. Edward Bloom to strike and dismiss the affidavits attached to and in support of the People of the State of Illinois' petition directed against S. Edward Bloom is hereby overruled.

ORDER ENTERED FEBRUARY 1, 1965

This cause coming on to be heard upon the petition of the respondent, S. Edward Bloom praying that an order be entered directing the State's Attorney of Cook County, Illinois, to furnish certain files, evidence and information set forth in the said petition, due notice having been served, and the court having heard counsel and being fully advised, doth Order that the prayer of the said petition be [fol. 76] denied without prejudice for the reason that the said petition is premature.

ORDER ENTERED FEBRUARY 1, 1965

This matter coming on to be heard upon the petition of the respondent, S. Edward Bloom, for an order allowing the said respondent and his attorney to examine the court file including investigation reports and statements of all witnesses, due notice having been served, and the court having heard counsel, and being fully advised, doth,

Order that the said respondent, S. Edward Bloom, and his attorney, and any other respondent and her attorneys, shall have and are hereby granted full and complete access to the entire Court file of this cause, and all documents,

pleadings and papers contained therein in the presence of a deputy clerk and it is further

Ordered that the Clerk of this Court shall make the said Court file and the aforesaid documents available for inspection by the respondent and their attorneys.

ORDER ENTERED FEBRUARY 25, 1965

This cause coming to be heard upon the petition heretofore filed by the People of the State of Illinois, plaintiff herein, against the defendant-respondent, S. Edward Bloom, to show cause, if any he may have, why he should not be punished for contempt of this Court; this Court having heard the evidence and arguments of counsel, and being fully advised in the premises; and the defendant-respondent in this cause being present in open court and represented by counsel, the Court Finds:

1. That William A. Melody, whose place of residence at the time of death was 2052 Lincoln Park West, Chicago, [fol. 77] Illinois, died on the 6th day of July, 1964, at Chicago, Illinois.

2. That on or about the 14th day of July, 1964, subsequent to the death of said William A. Melody, one S. Edward Bloom, attorney at law, duly licensed to practice law in the State of Illinois, did then dictate a document purporting to be the Last Will and Testament of William A. Melody, all the time being fully aware that the said William A. Melody died on the 6th day of July, 1964.

3. That the said S. Edward Bloom, having as aforesaid prepared the said spurious Last Will and Testament of William A. Melody, did thereafter prepare a petition to have this said document admitted to the Circuit Court of Cook County, Illinois, County Department, Probate Division.

4. That on or about the 11th day of August, 1964, S. Edward Bloom presented this petition before this Honorable Court asking that this Court admit to probate a document which said S. Edward Bloom knew at that date was not the valid Last Will and Testament of William A. Melody, deceased.

5. The Court further finds from the evidence adduced in this cause, that the above referred to document said to be the Will of William A. Melody and which was presented to this Honorable Court as such and which bore the signatures of Velma Hoyle and Betty Jean Tewell, as witnesses to the execution thereof, was not actually witnessed by these persons in the presence of William A. Melody and in the presence of each other as required by statute, but on the contrary the Court finds the facts to be that the said Velma Hoyle and Betty Jean Tewell affixed their names thereto after the death of William A. Melody, all of which [fol. 78] was known to S. Edward Bloom at the time he presented the above referred to document for probate before this Honorable Court.

And because of the above enumerated facts, the Court Does Find:

That the action of S. Edward Bloom in causing this purported Last Will and Testament and application for probate thereof to be presented was an act in derogation of the dignity of this Court and of the orderly processes of this Court and was in contempt of this Court.

It Is Therefore Ordered by this Court that the said S. Edward Bloom is hereby adjudged to be in contempt of the Probate Division of the Circuit Court of Cook County, Illinois; and

It Is Further Ordered by the Court that S. Edward Bloom is hereby sentenced to the common jail of the County of Cook and State of Illinois, as punishment for said contempt for a period of Twenty-four Months from the date of this order;

It Is Further Ordered by the Court that the Sheriff of Cook County, Illinois and any Deputy or Assistant of said Sheriff who may be in charge of said County Jail shall take the said S. Edward Bloom into custody and commit him to the County Jail and to remain for a period of Twenty-four Months from the 25th Day of February, 1965, and for his so doing, this order, or a certified copy thereof, shall be a sufficient warrant.

ORDER ENTERED FEBRUARY 25, 1965

This cause coming on to be heard on Motion of the Defendant, S. Edward Bloom, by Herbert F. Friedman, his attorney, and this Court, this day, having heretofore found the Defendant, S. Edward Bloom, guilty of contempt in [fol. 79] this above entitled cause and upon said judgment having set and fixed a sentence of 24 months in the common County Jail of the County of Cook, in the State of Illinois, and by this Motion the said Defendant having requested the Court to and to stay the mittimus arising therefrom and to stay the confinement and incarceration of the said Defendant S. Edward Bloom, for a period of three days herefrom, to allow the Defendant to post a supersedeas or stay bond for purposes of appeal of the said judgment and sentence of the Court in this cause to the Appellate Court of the State of Illinois—First District—or to the Supreme Court of the State of Illinois, and the Court being fully advised in the premises, therefore,

It Is Hereby Ordered And Adjudged that the mittimus be and is hereby stayed for a period of three days herefrom to allow and grant the said defendant time and opportunity to post or cause to have posted his Supersedeas or Stay Bond in the amount of $1,000.00, which said bond has been set by this Court, and by this Order is hereby set by this Court, for purposes of appeal of the said judgment, sentence and fine of this Court herewith made and imposed.

It Is Further Ordered And Adjudged that upon the Defendant, S. Edward Bloom, within three days therefrom, depositing or causing to be deposited with the Clerk of this Court, a proper $1,000.00 cash bond or $1,000.00 cash, that same shall operate as and be a Supersedeas or Stay Bond for said Defendant, staying the said judgment of and sentence imposed by this Court and staying the mittimus arising therefrom and staying the confinement and incarceration of the defendant, S. Edward Bloom, for purposes of [fol. 80] appeal and on appeal in this above entitled cause, and the same shall be done accordingly, and the Clerk of this Court is so directed to honor, accept and do.

Stay Bond.

Motion of S. Edward Bloom filed on March 17, 1965, to Set Aside and Vacate the judgment, for a New Trial and to Arrest the Judgment.

Motion of S. Edward Bloom filed March 24, 1965, to Amend and Supplement his motion to Set Aside and Vacate the judgment, for a new trial and Arrest the Judgment.

ORDER ENTERED MARCH 24, 1965

On Motion duly filed, and due notice having been given all persons entitled thereto, therefore,

It Is Hereby Ordered And Adjudged that leave be and is hereby granted S. Edward Bloom, Defendant herein, to amend and supplement his heretofore filed written Motion To Vacate, Set Aside and Quash The Order, Judgment And Sentence Of The Court And To Terminate The Proceedings By Striking Same For Lack Of Jurisdiction By This Court, etc.

1. To supplement and amend Paragraph B of page 2 by adding after the last word thereof a comma in lieu of a period and these words "and in addition, the Motion in Arrest of Judgment is directed to the insufficiency and de-

fects of the State's Amended Petition upon which Defendant was brought to trial."

2. To Amend and Supplement paragraph C on page 8 from the following:

> C. That this Motion for a New trial is made in conjunction with and in addition to, the Motion To Vacate, Set Aside And Quash The Order, Judgment And Sentence Of The Court And To Terminate The Proceed-
> [fol. 81] ing By Striking Same For Lack Of Jurisdiction By his Court, and is designed to bring in review before this Trial Court occurrences of the trial and to present for consideration alleged errors during the course of the trial which are hereinafter set forth:

to as follows:

> C. That this Motion for a New Trial is made in conjunction with and in addition to, the Motion To Vacate, Set Aside And Quash The Order, Judgment And Sentence Of The Court And To Terminate The Proceeding By Striking Same For Lack Of Jurisdiction By This Court and Motion In Arrest Of Judgment, and is designed to bring in review before this Trial Court occurrences prior to and during the trial and to present for consideration alleged errors arising therefrom:

4. Finally to Supplement and Amend page 27 thereof by the following addition of a new paragraph 2 thereon as follows:

> (2) That this Court arrest judgment for the reason that the State's Amended Petition upon which this cause was heard was defective and insufficient in law.

and further Amending page 27 thereof by marking the former paragraph (2) thereof as paragraph (3); and by marking the former paragraph (3) thereof as paragraph (4).

ORDER ENTERED MARCH 26, 1965

This matter coming on to be heard upon the Motion To Vacate, Set Aside And Quash The Order, Judgment And Sentence Of The Court And To Terminate The Proceeding By Striking Same For Lack Of Jurisdiction, By This Court, and in the alternative, Motion To Vacate And Set [fol. 82] Aside The Judgment And Sentence Herein And To Grant A New Trial and Motion In Arrest of Judgment and Amendments and Supplements thereto, filed March 17, 1965 by the respondent, S. Edward Bloom, and the said respondent appearing by Herbert Friedman, his attorney, and Daniel P. Ward, State's Attorney of Cook County, Illinois, appearing by Gerald J. Mannix, his Assistant, and Gregory A. Gelderman, Amicus Curiae, appearing as such, and the Court having heard counsel, and being advised;

It Is Hereby Ordered that the aforesaid Motions of the respondent, S. Edward Bloom, and the Amendments and Supplements thereto, be and the same is hereby denied.

Enter: Mar 26 1965

Robert Jerome Dunne, Judge.

Date: March 26, 1965

NOTICE OF APPEAL—Filed March 26, 1965

1. This cause is designated as above captioned. Appeal is taken to the Supreme Court of the State of Illinois.

2. Appellant—S. Edward Bloom, 188 West Randolph Street, Chicago, Illinois.

3. Appellant's Attorneys—A. Bradley Eben, One North LaSalle Street, Chicago, Illinois and Herbert Frederick Friedman, 188 West Randolph Street, Chicago, Illinois.

4. Criminal contempt of the Probate Division of the Circuit Court of Cook County, Illinois, for filing a petition to admit an alleged spurious will to probate.

5. On February 25, 1965, the said Probate Division of the Circuit Court adjudged S. Edward Bloom guilty of [fol. 83] said contempt and imposed a two-year sentence.

6. S. Edward Bloom is presently at large on bail.

7. S. Edward Bloom appeals from the order and judgment of February 25, 1965.

A. Bradley Eben, One North LaSalle St., Chicago, Illinois.

Herbert Frederick Friedman, 188 West Randolph St., Chicago, Illinois.

PETITION OF S. EDWARD BLOOM—Filed May 5, 1965

To The Honorable Robert Jerome Dunne, Judge of Said Court:

Now comes your petitioner, S. Edward Bloom, and petitions this Honorable Court as follows:

1. That your petitioner, S. Edward Bloom, and his attorneys and the Clerk of Court are in the process of compiling the record on appeal in this above entitled contempt proceeding for appeal of the judgment of this Court to the Supreme Court of this State.

2. One of your petitioners grounds for reversal on appeal has to do with the so-called Sam Fink Investigation Report which was during these proceedings referred to and which your petitioner states should be appended to and made a part of the record of appeal.

3. That an examination of the Court file discloses that the said Sam Fink Investigation Report is not a part of or contained within the Court files.

4. That your petitioner therefore asks this Court and you, Judge Dunne, to turn over to the Clerk of Court, the said

Sam Fink Investigation Report so that a certified copy thereof be appended to and made a part of the record on [fol. 84] appeal for purposes of perusal and examination by the Supreme Court of this State in connection with this cause.

5. That your petitioner states that unless the said Sam Fink Investigation Report is made a part of the record on appeal herein, that his rights of appeal may be prejudiced.

6. Further, your petitioner states that it is his considered opinion that the members of the Supreme Court will desire to examine the said Sam Fink Investigation Report.

Wherefore, your petitioner prays:

(a) That this Honorable Court, and you, Judge Robert Jerome Dunne, make available and turn over to the Clerk of this Court the said Sam Fink Investigation Report for the purposes of appending same, or a certified copy thereof, to and making same a part of the contemplated record on appeal in and of this above entitled contempt proceeding.

S. Edward Bloom.

ORDER ENTERED ON MAY 6, 1965

This cause coming on to be heard upon the petition of S. Edward Bloom, defendant, filed on May 5, 1965 and the hearing thereon continued to this date, which petition prays for the entry of an order directing the Court to make available, and to turn over to the clerk of this Court, the Sam Fink Investigation Report for the purpose of appending the same, or a certified copy thereof, is the contemplated record on appeal of this cause, and it appearing that the aforesaid Investigation report described in the petition of the said defendant, S. Edward Bloom, was not offered in evidence, nor received in evidence at the trial of this cause, it is therefore

[fol. 85] Ordered that the prayer of the said petition be and the same is hereby denied, to which the defendant, S. Edward Bloom, duly excepts.

May 6, 1965

Enter:

Robert Jerome Dunne, Judge.

Certificate of Clerk of Circuit Court of Cook County, Illinois that the foregoing is a true, perfect and complete record on appeal and marked Volume I of said appeal.

Placita to Volume II of the Record.

Report of Proceedings February 2, 3, 4, 5, 8, 10, 11, 15, 23, March 24 and May 6, 1965 before the Honorable Robert Jerome Dunne, Judge.

Present:

Mr. Gerald Mannix, on behalf of the People of the State of Illinois;

Mr. Euclid Taylor, on behalf of Pauline Owens;

Mr. Anthony Bradley Eben, on behalf of S. Edward Bloom;

Mr. Gregory Gelderman, as Amicus Curiae.

The Court: Are we ready to proceed, Gentlemen?
Mr. Mannix: The People are ready.
Mr. Eben: We are ready.
The Court: Do you want about five minutes to get yourself organized?
Mr. Eben: Yes, sir.
The Court: All right.

(Recess.)

[fol. 86] Mr. Eben: We are ready for the respondent.
Mr. Mannix: We are ready for the People, your Honor.
The Court: Proceed. People of the State of Illinois versus S. Edward Bloom.

Mr. Eben: For the record, your Honor, and, preliminarily, although I am not sure it is necessary, I would like to renew the motions heretofore made as to the sufficiency of the petition, and so on; and,

Secondly, because of the decisions of the Supreme Court handed down, I would also like to ask for a trial by jury.

The Court: Overruled. I will overrule the latter motion. So far as the other motions are concerned, the Court has already ruled on them, and the rulings will stand.

Mr. Mannix: Your Honor, at this time I would like to amend the People of the State of Illinois petition on its face, and, in particular, allegation No. 3. Allegation No. 3 reads:

That the alleged last will and testament dated June 21 was filed with the Clerk of this Court on or about the 9th day of October, 1964.

I would like that to read that the alleged last will and testament, dated June 21, 1964, was filed with the Clerk of this Court on or about the 20th day of July, 1964.

The Court: The 20th day of July, 1964, you say?

Mr. Mannix: Yes, sir.

The Court: Leave will be granted to do that.

Mr. Mannix: Thank you, your Honor.

The Court: Proceed.

Mr. Mannix: Your Honor, at this time, I would like to have marked as exhibits, certain documents; the first one [fol. 87] being the alleged last will and testament of William A. Melody, dated June 21, 1964, filed with this Court on the 20th day of July, 1964.

I would like to have the court reporter mark this as People of the State of Illinois Exhibit No. 1 for identification.

(The document was marked as requested.)

Mr. Mannix: I have here an order signed by Judge Dunne, filed on September 17, 1964, and signed on that same date; the subject order being the will of June 21, 1964, and denial of that will to probate.

I would like the court reporter to mark that as People of the State of Illinois Exhibit No. 2 for identification.

(The document was marked as requested.)

Mr. Mannix: The last will and testament of William A. Melody, filed on July 7, 1964, being dated the 4th day of October, 1962, and a codicil attached thereto, being dated the 9th day of August, 1963.

I would like to have the court reporter mark this document as People of the State of Illinois Exhibit No. 3 for identification, please.

(The document was marked as requested.)

Mr. Mannix: I have here a petition for probate of will and for letters testamentary relating to the People of the State of Illinois Exhibit No. 3 marked for identification, being the last will and testament of William A. Melody, dated October 4, 1962, and the codicil being dated August 9, 1963, showing one Edward Walliser as the petitioner.

Mr. Eben: The petition is dated October 4, 1964.

Mr. Mannix: But related to the will of October 4, 1962.

[fol. 88] Mr. Eben: All right.

Mr. Mannix: I would like to have the court reporter mark this as People of the State of Illinois Exhibit No. 4 for identification.

(The document was marked as requested.)

Mr. Mannix: Petition for probate of last will and testament of William A. Melody, and letters testamentary related to the estate of William A. Melody, pertaining to will dated June, 1964, signed by one John McNeill, of the Northern Trust Company, and one of the attorneys being S. Edward Bloom.

Mr. Eben: The date of the petition, please.

Mr. Mannix: August 11th.

Mr. Eben: All right.

Mr. Mannix: I would like to have the court reporter

mark this as People of the State of Illinois Exhibit No. 5 for identification.

(The document was marked as requested.)

Mr. Mannix: I have here medical certificate of death, a certified copy of the same, of one William Aloysius Melody, dated August 12, 1964, showing the death of the decedent. William A. Melody, as the seventh month, sixth day, year 1964.

I would like to have the court reporter mark this as People of the State of Illinois Exhibit No. 6 for identification, if the Court please.

(The document was marked as requested.)

Mr. Mannix: Your Honor, at this time, I move the Court that each and every one of these exhibits marked for identification, be received in evidence.

The Court: Any objection?

Mr. Eben: We will object to them.

[fol. 89] The Court: You will?

Mr. Eben: Yes, sir.

The Court: The Court will admit the exhibits into evidence.

(Which said documents, so offered and received in evidence, marked People of the State of Illinois Exhibits 1 through 6, are in words and figures following, to-wit:)

Mr. Eben: If the Court please, as I indicated to your Honor, that we would move for the production today of the so-called Fink investigation report. I understood your Honor at that time that it would not be made available until some witness took the stand, whose statement was reflected in the report. Of course, we have no way of knowing, not having seen the report, but I understand if there is any witness' statement in the report some place, or reference to any witness, we would like to have that made available.

The Court: It is not a part of the record. It belongs to the Court itself, and the Court will turn it over to you, and you will be at liberty to read it as concerns any witness' testimony. The Court wants to get at the truth or falsity of this entire proceeding. So, I will turn it over to you and you may use it for cross-examination. I will give you time to examine it.

Mr. Eben: Will you make the file available to me also, your Honor?

The Court: Yes.

Mr. Eben: Thank you, your Honor.

The Court: It will not be passed around, except to find what you are looking for.

Mr. Friedman: That is correct. It will stay at this counsel's table, and no place else.

[fol. 89a] PAULINE OWENS, called as a witness on behalf of the State of Illinois, having been first duly sworn testified as follows: (Partial abstract only.)

My name is Pauline Owens. I reside at 3925 West Wilcox Avenue.

I am a practical nurse and have been for approximately 15 years. I was employed by Mr. William Melody as a practical nurse almost two years.

The first time I saw the People of the State of Illinois Exhibit #1 was in the latter part of July 1964, when I presented it to a Mr. Garrett at the Northern Trust Bank. To the best of my knowledge Mr. Bloom prepared that Will.

[fol. 89b] I first talked to Mr. Bloom sometime after June 10, 1964, on the phone. I called Mr. Bloom to prepare a Will for Mr. Melody.

The first time I saw Mr. Bloom was after Mr. Melody died. The middle part of July, 1964, at 10:00 A.M.

I had a conversation with Mr. Bloom on that day.

Mr. Bloom said that Mr. Melody was a wealthy man, and he had information concerning different personal mat-

ters of Mr. Melody's business. He asked me for some Bishops addresses and asked if I could get two witnesses. I told him that Mr. Melody passed away on July 6th. Mr. Bloom then said that Mr. Melody was leaving me $40,000.00, and from his investigation and inquiries Mr. Melody was a very wealthy man. Why should I not then try to get it.

He said the signature was very poor and if these were his expressed wishes he didn't see any reason that he couldn't produce the Will.

I then told Mr. Bloom, that before Mr. Melody died, he had given me and some more people a large sum of money, and he was in a weakened condition, and I doubted very much if he would be successful.

Mr. Bloom assured me that if Mr. Melody had a signed note before he died, on the day he died, that there wouldn't be any reason why they would object to the Will.

Mr. Bloom wanted to know what kind of a person was Mr. Melody's relatives. I told him, to the best of my knowledge. He asked me directly who would he be liable to have trouble with; who would give him the most trouble, if he did go into this.

[fol. 89c] I told Mr. Bloom that Mr. Melody had a niece, a Mrs. Connolly, and that he had a nephew who was a policeman, and I doubted very seriously that he would believe his story. Mr. Bloom said he could handle it.

Then Mr. Bloom asked me about witnesses, and I told him that the only witnesses that I could get, would be colored people.

Mr. Bloom said that Mr. Melody had approximately a million dollars, and that a colored witness would not stand up in Court on a Will that size, he wanted two white witnesses.

I then told him the only person that I had spoken to about being a witness was Mrs. Hoyle at Waukegan, and that was sometime in June, and I didn't bother her any more, because Mr. Melody was sick; he was unable to com-

municate some of the times, and I was trying my best to get him well, not completely well, because the doctor said he never would be a well man. He was hoarse and I explained this to Mr. Bloom. He then told me to come back the following evening.

Then after the Will was prepared Mr. Bloom gave it to me in a brown envelope. Mr. Bloom told me to ask Mrs. Allen to take it to Waukegan to this witness to Mrs. Hoyle. I gave the envelope to Mrs. Allen and a few days later she returned it to me. I called Mr. Bloom and asked him if I could mail the envelope to him. Mr. Bloom asked me to take it to the Northern Trust Bank and present it to Mr. Garrett.

[fol. 90] The Court: Cross-examine.

Bear in mind that the Court has said to you that he will turn over that report to the amicus curiae, and, if you would like to look at that before you conduct your cross-examination, you may do so.

Mr. Eben: Yes.

The Court: All right, then, be back here at two o'clock. You are excused until two o'clock, Mrs. Owens. Kindly refrain from discussing the case with anybody.

The Witness: Yes, sir.

Mr. Gelderman: The report that your Honor turned over to counsel in the early part of the day, I will say that I have examined this report, and, for the purpose of the record, it is now twelve o'clock. Am I to give this report to Mr. Eben?

The Court: You may give it to Mr. Eben in my courtroom for a half hour.

Mr. Eben: I thought I would examine it here.

The Court: You are the doctor, but you should get something in your stomach. You can do that.

Mr. Gelderman: Should we have a deputy present?

The Court: I want somebody here when the file is being examined by counsel for the respondent, Mr. Bloom, and he is to stay here until counsel finishes his examination, and then take it back.

The Court stands adjourned until two o'clock.

(Whereupon, a recess was taken to two o'clock p.m., Tuesday, February 2, A.D. 1965.)

[fol. 90a]

CROSS-EXAMINATION OF PAULINE OWENS

The first time I communicated with Mr. Bloom was when I called him on the phone, sometime after June 10, 1964.

Mr. Melody didn't know I was calling Mr. Bloom. Mr. Melody just wanted an attorney.

Mr. Bloom called me on the phone sometime after July 6, 1964. He asked me to come into his office.

I then went to Mr. Bloom's office. I came into his office the first thing I told him that Mr. Melody had passed away. I don't recall whether that was the very first word I said, but I definitely made it clear that he passed away.

He said that he had visited with Mr. Melody and told me how much money Mr. Melody had left me. I did not know how much Mr. Melody had left me until he told me. He said that he had talked to Mr. Melody and these were his express wishes. I told him the man was dead. He said, well, as long as this was his express wishes, he was going to get on with it, so he could do it. He asked me about getting some witnesses. I told him that the only witnesses that I could get would be some friends of mine. He said are they white or colored. I said they would be colored. He said from my investigation this man is worth a million dollars, and colored witnesses will not stand up in Court. He wanted some information from me about Melody's habits, his family, and who I would be most liable to have the most difficult trouble with. I said well, I don't think you will get by in the first place Mr. Bloom. Mr. Melody signed a large note before he died, and a lot [fol. 90b] of checks, and he was in a weakened condition this is going to be questionable. I said to him, "Maybe

Mrs. Connolly will believe you, but I doubt whether Mr. Wollisler will." He said he could handle it don't worry about that.

When I was in Mr. Bloom's office on July 14th it was because Mr. Bloom called me. He claimed he had kept his appointment with Mr. Melody sometime in June that he had considerable information about Mr. Melody's circumstances about his wealth and other things.

I presume that when Mr. Bloom told me Mr. Melody wanted me to have some money he was talking about a Will.

I don't know what Mr. Bloom was doing on that date (July 14, 1964). I heard Mr. Bloom tell his secretary to indicate that Mr. Melody was blind, partially blind.

Later on that same day I received from Mr. Bloom a brown envelope containing a document. I took that brown envelope home and gave it to Mrs. Allen.

I don't remember exactly how long I was with Mr. Bloom on July 14, 1964.

It was long enough for him to ask several questions. The reason he wanted to see me was because I could give him more information than he had gathered. I gave him some names of people to be included in the will. I then left his office and was told to return later. During that day Mr. Bloom asked me if Mr. Melody transacted his own business, he wanted to know who was taking care of the financial arrangements; what position was mine; and [fol. 90c] all the information that he thought he needed that I could give him; just what I do not know. He asked me what was the last doctor Mr. Melody had seen. What was the diagnosis, and what privileges did the man really have.

He wanted to know everything that Mr. Melody had been doing for himself, and was allowed to do for himself, and would the doctor stand behind it.

Mr. Bloom asked me could I get him witnesses and I told him the only witnesses I could get were colored. Mr.

Bloom told me that since a million dollars was involved colored witnesses would not stand up, that nobody would believe them. He said a judge wouldn't believe them. I told him I know a Mrs. Hoyle who is white. Around June of 1964 I had talked with Mrs. Hoyle about being a witness. The two reasons why I didn't tell Mr. Bloom about using Mrs. Hoyle as a witness were that she lived in Waukegan and I had contacted her prior to Mr. Melody's death.

When the matter of payment came up Mr. Bloom said he would bill the estate.

[fol. 92] Mr. Eben: If the Court please, we would like to at this time have an opportunity to take a look at the investigation report of Sam Fink, for about five minutes.

This is a joint motion of the State's Attorney and ourselves.

The Court: You mean my report?

Mr. Eben: That's correct, Judge.

The Court: All right.

Mr. Gelderman: Your Honor, I was going to suggest the record show Mr. Eben, representing the respondent, has now examined the requested papers prior to hearing, meaning the amicus curiae report Sam Fink presented to the Court.

Mr. Mannix: May I suggest Mr. Bloom was also present.

[fol. 92a] SANDRA KERNENE called as a witness, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mannix:

My name is Sandra Kernene; I live at 2749 West 38th Street. I am not presently employed. I was employed by S. Edward Bloom as a stenographer-secretary. I have seen People's Exhibit #1 before. I typed the Will, I believe

[fol. 92b] in July. It was in Mr. Bloom's office where I was employed by him as a secretary-stenographer. As I stated, I typed the document. I did so on July 14, 1964. Mr. Bloom dictated the instrument to me. I arrived in Mr. Bloom's office about 12:30. Mr. Bloom and his other secretary, Susan Cohen were present. A client, Pauline Owens, was also there. Mr. Bloom called me into his office and stated that he was going to dictate a Will. Mr. Bloom then dictated the instrument which I have identified as People's Exhibit #1. I took his dictation in shorthand in my notebook, dating the notebook page as July 14, 1964. I do not know where the notebook is now. The last time I saw that notebook was on my desk on July 14, 1964. It was on my desk in the workroom of Mr. Bloom's office.

When Mr. Bloom dictated the Will to me on July 14, 1964, he referred to notes. I don't know in whose handwriting the notes were compiled. After dictation was completed, I typed the Will and put it on Mr. Bloom's desk. Then Mrs. Owens came back to the office and took the Will with her. Mr. Bloom did not dictate what date was to be placed on the instrument. We always leave the date blank. Mr. Bloom didn't tell me to put a date on it. I did not ask him.

I never actually attempted to look for my notebook again. I went up to the office, but I never actually looked for it. Mr. Fink requested me to locate my notebook. Pursuant to such request, I went back to Mr. Bloom's office. I don't remember the date but it was after July 14, 1964. I did not subsequently ever attempt to locate my notebook again. The last time I saw it was in Mr. Bloom's office at the desk which I occupied.

[fol. 92c] Cross-examination.

By Mr. Eben:

I commenced working for Mr. Bloom in November of 1961, in a non-continuous capacity. I worked continuously until September of 1963, as his secretary. After

that I had left several times and returned. In any event, I worked for him for about two years. During that time I observed his habits around the office. On July 14, 1964, I arrived at his office at 12:00-12:30 in the afternoon. The last date prior to July 14, 1964 that I worked for him was July 2, 1964. After July 14, 1964, I did not appear again at his office as a secretary-stenographer. After I arrived on July 14, 1964, I didn't go into his inner office for about 20 minutes. Pauline Owens was with him and so was Susan Cohen. When I entered his office, he stated that he was going to dictate a Will. I was then prepared to take his dictation. He then began to dictate the document which has been identified as People's Exhibit #1. I took down the matters which would appear in my notebook. Mrs. Owens was present and in such position to hear Mr. Bloom dictating to me.

The first paragraph wasn't dictated; he just told me to copy it from another Will.

Previous to this, I had left his office to get another Will, at his request, so that he could use it as a form. He told me the name of the testator, William A. Melody. Mr. Bloom dictated a list of legatees or beneficiaries. In dictating those names, he referred to a couple of pieces of paper with some writing on it. I don't remember if he conversed with Mrs. Owens during this period of time [fol. 92d] except occasionally for spelling of names. Mrs. Owens had what looked like a Probate Court form in front of her, a legal sized document. She would orally give Mr. Bloom names and amounts. I copied the information of the various legatees as they were dictated to me. When I went to type the Will I took with me the list which Mr. Bloom had in front of him. I am familiar with Mr. Bloom's handwriting. The writing on those slips of paper were not in his hand. Mrs. Owens handed those pieces of paper to Bloom when I was in the office.

The part about the executor was dictated to me by Mr. Bloom. The sixth paragraph of the Will was also not a part of the form, but was dictated to me by Mr. Bloom.

I then went to the outer office to prepare to transcribe the instrument. Mr. Bloom asked me whether I would have the Will ready by 3:00. I answered affirmatively. Bloom suggested that Mrs. Owens go down for coffee and return then. It was between 1:00 and 1:30 at that time. Mrs. Owens left. I typed the Will. I also stapled the Will and placed a blueback on it. I left the date open. I invariably leave dates open when I typed Wills for Mr. Bloom, because the party might not sign that day.

Mrs. Owens returned at 3:00 P. M. and went in with Mr. Bloom. I was called in afterwards and told that there would be changes made. That was about 4:00 P. M. There were changes and a few names to be added. Changes were basically in amounts of money.

Mrs. Owens was present then. One of the changes was to increase the amount to Mrs. Owens 100%, from $20,000 [fol. 92e] to $40,000. I can't recall the other changes. There were maybe 4 or 5 names added. Mrs. Owens did not say anything as I recall.

Page 1 of the Will was not retyped; Page 2 may not have been also, I'm not sure. Page 3 was changed to reflect Mrs. Owens added amount.

I finished taking notes on the revision at about 5:00 P. M. Mr. Bloom and Mrs. Owens remained there until I revised the instrument. It took me about a half hour to revise it. It was about 5:30 P. M. I brought the revised draft in to Bloom a page at a time so that it could be checked faster. Bloom read the pages of the Will over and gave it to Mrs. Owens. She read it.

I made an original and two copies of the Will. After the last page was finished and read, it was all put together and stapled by Mr. Bloom. She folded it in half and put it in her purse. She then left the office. That was the last time I saw the Will.

Mr. Bloom stated that inasmuch as he (Mr. Melody) was blind, he (Bloom) was going to state in the closing paragraph that the Will was read to him instead of by him. Mr. Bloom said that to me.

This was done in the original draft by me. The Will was not signed at this time. No signatures appeared on any of the pages.

On July 15, 1964, I did not reappear for work. I haven't worked for Mr. Bloom since.

[fol. 92f] Redirect examination.

By Mr. Mannix.

On July 14, 1964, when I typed the Will for Mr. Bloom which is People's Exhibit #1, I had occasion to receive a check from Yarnall Chevrolet, Inc. (People's Exhibit 6 —check—marked and identified by reporter). This is why I am able to pinpoint the exact date as to when I typed the Will.

Recross examination.

By Mr. Eben:

The check was made out to Donald Kernene for $122.00, and dated July 13, 1964. Donald Kernene was my husband. He brought the check to me on that date. I was to deposit it in the bank. I took the check from him and did not give him any money in return.

(People's Exhibit #6 admitted into evidence.)

Louis Swidler, called as a witness, having been first duly sworn, was examined and testified as follows:

My name is Louis Swidler. I reside at 7648 South Euclid, Chicago. I am a lawyer at 33 North LaSalle. I have been practicing for 28 years. I knew Mr. Melody since October, 1962. I was his attorney and rendered legal services to him on that date. I prepared People's Exhibit

#3. I know Pauline Owens. I met her when I met Mr. Melody, on October 3, 1962. I know when Mr. Melody died. It was Monday, July 6, 1964. The first time I saw Mrs. Owens subsequent to Melody's death was on August 18, 1964 at the Sherman Hotel. About 40 people were present [fol. 92g] at the meeting called by Mr. Bloom. There was a Will read to the people there. The instrument read was People's Exhibit #1.

The first time I spoke with Bloom in connection with the Melody estate was on July 20, 1964. Mr. McNeil of the Northern Trust Co. advised me, on July 17, 1964, that a second Will was located and presented to his bank. That was the first time I learned of the existence of People's Exhibit #1.

On July 20, 1964, a meeting was held attended by John McNeil, Chas. Kaufman, Don McLucas, myself and S. Edward Bloom. I had a conversation with Mr. Bloom at that time. Mr. Bloom said, "This is a windfall to me. I haven't handled a great deal of probate work and I would welcome you to join with me in the probate of this Will."

Mr. McNeil told Mr. Bloom that it was the policy of the bank to retain as its attorney the one who drew the Will and he suggested that if Mr. Bloom was going to go ahead with the filing and proof of the Will that it would be his job.

I asked Mr. Bloom when he had met Mr. Melody and how he got the information and contents of the Will and he told me that on June 12, 1964, he was called by Mrs. Owens from the Melody apartment and that he went over there on that date and got the information. I asked him whether Mr. Melody carried on a conversation with him and how his voice sounded. He said that Mr. Melody spoke in a very hoarse voice and after awhile, seemed to mumble. And that Bloom needed some in understanding Mr. Melody and that Mrs. Owens explained to him what Melody was trying to say.

[fol. 92h] He said that when the Will was prepared he called the Melody apartment for an appointment to bring

the Will there and Mrs. Owens told him to mail it and that is what he did.

I asked for a copy of the Will and it was brought into the meeting. It was signed by witnesses and dated June 21, 1964.

Cross-examination.

By Mr. Eben:

I drew the Melody Will dated October 4, 1962. (People's Exhibit #3). Mr. Melody advised me as to the terms of the Will. We met at the bank on October 3, 1962. In 1962, Mr. Melody made himself understood; I had no difficulty understanding him.

Mrs. Owens brought Melody to the bank on that date. I had previously talked with both Mrs. Owens and Mr. Melody on the phone. On October 4, 1962, I drew the Will. I also handled the execution on the 4th of October, 1962. The fact of Mr. Melody's blindness was noted in the attestation clause. It was witnessed in my office. Mr. Melody signed the Will and initialled each page.

At the meeting at the Sherman House, Mr. Bloom read the Will (People's Exhibit #1) and made some further comments to the group. Mr. Bloom suggested anyone interested should retain their own attorney to represent them in connection with their interests under the Will. I don't remember any comments on the validity of the Will he read. Bloom did say that there might be action taken to contest the Will and that they were at liberty to retain counsel.

[fol. 92i] In the Will I drew, Mrs. Owens was a legatee for $5,000. Mr. Melody directed this. I represent the Northern Trust Company as executor under the Will admitted to Probate. (Referring to People's Exhibit #3.)

MARVIN JURON, called as a witness, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mannix:

My name is Marvin Juron; I reside at 3100 Neenah, Wilmette, Illinois. I am an attorney at law since 1958, admitted to practice in Illinois. I know S. Edward Bloom. I was in the Probate Division of the Circuit Court of Cook County on August 11, 1964. I appeared in response to a notice of a continued date. August 11, 1964 was the continued date when the Will was to be admitted to probate. That is, the Will dated June 21, 1964. I had occasion to see Mr. Bloom there. He was presenting a motion to the court. Yes, People's Exhibit #7 is the petition which Mr. Bloom presented to the court on August 11, 1964.

EDWARD L. S. ARKEMA, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mannix:

My name is Edward L. S. Arkema; I reside at 9342 Longwood Drive, Chicago, Illinois. I am licensed to practice law in Illinois and have been since 1932. I have an appearance on file in the estate of Melody. It was filed [fol. 92j] on August 4, 1964. On August 5, 1964, I was present at the Northern Trust Company along with Mr. Kaufman, vice president of the bank, Mr. McNeil, an officer of the bank, Mr. Bloom, Mr. Swidler and Mr. Fink. I had arranged for the conference asking that all parties be present. I addressed myself to Mr. Bloom, inquiring if he prepared the Will or dictated the Will and he said he did. I asked him how he got the information, when he got it

and who he got it from, as I was advised that Mr. Melody couldn't communicate. He said he talked to Mr. Melody and had gotten the information. I then took out Dr. Webster's medical report stating that on June 16, 1964, Mr. Melody, in his opinion, could not communicate.

I then said to Mr. Bloom, "Mr. Bloom, I doubt whether this is a good Will; if you proceed with this I want you to sign your name to an affidavit that will be attached to this Will, that this is a true copy of the last Will and Testament of William A. Melody, and further, I want your name attached to and affixed to the petition for the admission of this Will when it is presented." Mr. Bloom became nervous and said, "I will not present that unless I get a written letter from the bank to do so." Mr. Kaufman and Mr. McNeil stated that they would not do so. They so stated in Bloom's presence.

I had occasion to be in the Probate Division of the Circuit Court, in a courtroom on August 11, 1964. I did so because I had an appearance on file in this estate and I also wanted to ascertain whether Mr. Bloom was going to formally present to the Court on that occasion the petition for the admission of the purported Will of Mr. Melody [fol. 92k] dated June 21, 1964, for probate. I am referring to People's Exhibit #1.

The case was called before Judge Gumbel at 2:00 P.M. Mr. Bloom stepped up with the petition. . . . The date of September 23, 1964 was then given as the date for the hearing on the purported Will.

To summarize, Mr. Bloom, on August 11, 1964, formally presented a petition before the Court, asking that the now declared spurious Will of June 21, 1964 be admitted to probate.

(People's Exhibit #7A and 7B identified.)

(#7A—Copy of Will filed on August 11, 1964 by S. Edward Bloom.)

All of those persons who had some connection with these proceedings were present. Exhibit 7A is the document which Mr. Bloom presented.

BERNARD KOENIG, called as a witness, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eben:

My name is Bernard Koenig; I reside at 1230 Oxford Road, Deerfield, Illinois. I am an attorney at law and have been since 1941. I practice in Chicago, Illinois. I practiced law in 1964, at 2410 W. Madison Street, Chicago, Illinois.

I have known Pauline Owens approximately two years. I can't remember when I first met her. I know her only for the professional work I did for her as an attorney. I saw Pauline Owens on July 8, 1964, in my office. I had a conversation with her in the early afternoon that day. [fol. 92 l] No one else was present. Mrs. Owens came into the office and said Mr. Melody had died; that on July 6, 1964, the date of his death, a firm of lawyers had prepared a petition to probate a Will, but that this Will did not reflect the true intentions or feelings of Mr. Melody. She further stated that she wanted another Will drawn up.

I said I wouldn't do it, but at her insistence, I said I would check and see if there has been any such estate opened and petition for probate filed.

Mrs. Owens said she did have a list of the people who were to receive anything and the amounts, giving me a typewritten size piece of paper, white and handwritten. It appeared to be in her handwriting.

I said I would go downtown and check on the estate and for her to see me next day. I saw her again on July 9, 1964, in my office.

No one else was present. I said to Mrs. Owens that I had checked and found that an estate had been opened

on July 6, 1964, in the name of William A. Melody, with a petition to probate a Will and that I wanted nothing further to do with it. She said that I should reconsider it because it's very important.

On the 9th of July 1964, Mrs. Owens said that the witness to the Will would be arranged and that I would not have to worry if I took it on because she had been practically making out the checks that Mr. Melody had signed for the past year or so.

I said I didn't want any part of it. She said she would call me.

On July 13, 1964, at 9:00 A.M. she again came to my office. Between July 9 and July 13, she called me on the [fol. 92m] 11th of July, 1964 to ask me to reconsider. I felt the only way to discourage her was to tell her to bring in $1,500.00 in cash. I did this to discourage her. By asking for a huge sum of money, I felt I would get rid of her. She said she would raise it. On the 12th of July, 1964, she called me at home. It was Sunday. She said she had the money and would be in Monday morning, the 13th. I told her not to come.

On the 13th of July, 1964, Mrs. Owens came to my office. She showed me the money. I told her I wanted no part of it and that she was wasting her time. Mrs. Owens told me she needed a Will because she told the nephew that the Will is drawn. I told her to get someone else. It took another hour and a half before she left.

Cross examination.

By Mr. Mannix:

When I came to the Probate Court, I investigated to see if Melody had died, if a Will had been filed for probate, and if an estate had been opened. I conducted such investigation. When Mrs. Owens came into my office, she made it abundantly clear that Melody was dead, there is no question about that.

[fol. 93] EDWARD S. L. ARKEMA, recalled as a witness, having been first duly sworn, was examined and testified further as follows:

Direct examination.

By Mr. Eben:

Q. Mr. Arkema, you are the same gentleman who testified here and you are today under oath, is that correct?

A. I am.

Q. And at that time, do you recall that you testified concerning a conversation on August 4, 1964, at the Northern Trust Company here in Chicago?

A. I believe it was August 5th.

Q. August 5th. Who else was present then, do you recall?

A. There were present on that occasion, Mr. Kaufmann, Mr. O'Neil, both of them employed by the Northern Trust Company, Mr. Swidler, Mr. Bloom, and after the beginning of that session, Mr. Sam Fink arrived.

Q. When you say Mr. Bloom, you are referring, are you not, to Mr. Bloom who is the respondent in this particular case?

A. Yes, I am.

Q. Now, without going through all the conversation, which you testified to on your direct, I will ask you whether or not at that time you had occasion to observe Mr. Bloom's general demeanor during the course of the conversation?

A. Yes, I did.

Q. Will you describe what you saw and hear in that respect?

A. I observed, after I made certain observations or statements to him and the others present, that he did appear somewhat agitated.

[fol. 94] Mr. Mannix: Your Honor, I move this be stricken. These are conclusions on the part of the witness.

The Court: It may stand.

By Mr. Eben:

Q. Did you observe anything else?

A. When I stated to him that if he proceeded ahead, I wanted him to sign an affidavit and attach it to the will, that this is a true and correct copy of the last will and testament of the deceased; and also to affix his signature to any petition to present that will.

I noticed then and observed this agitation seemingly, oh, in his speech and also muscular reaction and movement.

At which time, then, he said he would not do that unless he got a written authority or direction from the bank so to do it.

Q. What if anything did you observe as to his physical mannerisms on this occasion?

A. I would say when you add that together with the observations on several other occasions—

Mr. Mannix: I am objecting to this, your Honor.

The Court: He may answer it.

The Witness: I came to the conclusion that he seemed to have no awareness of—

Mr. Mannix: Objection, your Honor. It's a conclusion.

The Court: He may answer.

The Witness: —of the legal significance of the acts that were then being carried on.

Cross examination.

By Mr. Mannix:

Q. Mr. Arkema, where did you receive your psychiatrist's degree?

A. I haven't, as you probably know, received such a degree.

[fol. 95] Q. Well, when did you receive this great talent for looking into the minds of men; did this just come about you?

A. I have practiced 32 years and I have observed State's Attorneys and other attorneys and other people in their conduct and have developed a measure of judgment.

That is not professionally as a psychiatrist, but it has lent me very well in the practice of law.

Q. Now, do you reflect upon this or does this come about you all of a sudden or do you think about it two or three weeks later and then do you come to these conclusions?

A. I have been fortified in that conclusion by many attorneys who have referred to the erratic conduct of Mr. Bloom, the peculiar conduct.

That fortified me in the judgment that sometimes he has difficulty in recognizing the legal significance of things that are to be done or in the process of being done.

By Mr. Mannix:

Q. On September 10, 1964, you filed a petition in this Court, relating to one S. Edward Bloom, didn't you?

A. What date?

Q. September 10, 1964?

A. I believe so.

Q. You dictated this petition to your secretary?

A. That's correct.

Q. All right, is this the original of the petition you filed before his Honor, Judge Dunne?

A. That's correct.

Q. All right, would you read word for word, this is what you filed, in a nice loud voice?

A. You mean out loud?

[fol. 96] The Court: Let him read it to himself.

Mr. Mannix: Mark this People of the State of Illinois Exhibit Nine for Identification, then I'll read for the witness.

(Document marked People of the State of Illinois Exhibit Nine, as requested).

Mr. Eben: Your Honor, I assume you are taking judicial notice.

The Court: I am. Is there any objection to it being offered in evidence?

Mr. Gelderman: Your Honor, I suggest it's part of the Court file.

Mr. Eben: I have no objection.

The Court: All right, it may be admitted.

Mr. Mannix: For benefit of cross-examination, your Honor, I asked Mr. Arkema when he felt that Mr. Bloom exhibited these tendencies of not knowing what he was doing.

The Court: All right, let him answer.

Mr. Mannix: I asked him, and he said at that time.

The Court: All right.

By Mr. Mannix:

Q. Now, on September 10, 1964, I want to ask you, Mr. Arkema, whether or not he felt this way.

Now, did you feel that on the 14th day of July, 1964, subsequent to the death of said William A. Melody, said Pauline Owens did employ legal services of the said S. Edward Bloom to dictate a document attached hereto marked Petitioner's Exhibit One?

Mr. Eben: I don't know what your Honor's ruling was. I didn't pick it up.

[fol. 97] But the petition is on the petition of Mr. Walliser and Mrs. Connelly, not Mr. Arkema.

What if anything his connection is with it, I don't know. I'm assuming that could be developed.

But I'm saying so far as it goes to the merits, and your Honor indicated that anything that goes in is going to the merits.

Mr. Mannix: What is the question now?

(Last question read by the reporter.)

Q. Do you feel that is what Mr. Bloom did?

A. Pauline Owens procured legal services on that day.

Q. Of S. Edward Bloom, the 14th day of July?

A. Yes, of S. Edward Bloom.

Q. And do you believe that—

A. Mr. Mannix, substantially everything that is in that petition is stated truthfully and correctly, making it very brief.

Q. So everything you've got in this petition is the truth?

A. That's correct.

Q. And that's the way you feel?

A. I haven't changed my mind.

Q. You haven't changed your mind on that?

A. No.

Mr. Mannix: All right, your Honor, I would like to introduce this, then, as part of our case.

Mr. Eben: May I see it, please?

The Witness: With the Court's permission, I will make one observation.

Mr. Gelderman: I suggest to your Honor it would be proper procedure not to admit documents on cross-examination, but only to have it marked, and then after, [fol. 98] on redirect, Mr. Mannix may offer the document.

The Court: This is what I said. When you put in your case, you can put that in and offer it at that point.

Mr. Mannix: All right, and this will be—

The Court: On rebuttal, I assume.

Mr. Mannix: And this will show what Mr. Arkema feels about Mr. Bloom.

Mr. Eben: Have you finished.

Mr. Mannix: Just about.

By Mr. Eben:

Q. Subsequently, it's a fact, is it not, Mr. Arkema, that this petition was amended?

A. That's correct.

Q. And the vital change was that such allegations—

Mr. Mannix: Object, your Honor, as to what the vital change was.

The Court: Sustained.

Mr. Eben: Strike the word vital.

Q. One of the amendments was that some matters which had been alleged directly in the first petition were alleged to be on information and belief in the subsequent petition, is that right?

A. That's true. Except as to paragraph 23. A was added.

Mr. Eben: Would you be good enough to mark this Respondent's Exhibit 8 for Identification?

(Document marked Respondent's Exhibit 8 for Identification, as requested.)

By Mr. Eben:

Q. And I ask you to examine it and to state what it is, if you know.

A. This is the amended petition filed by Edward Walliser and Marie Connelly.

[fol. 99] Q. By whom is that prepared, if you know?

A. Prepared by myself, filed October 22, 1964.

Q. And did that document amend People's Exhibit 9 for Identification?

A. Yes, being as introductory statement in certain paragraphs that some of the matters were alleged on information and belief and 23A was subsequently added, by leave of Court, to this petition.

Mr. Eben: All right. I have nothing further.

Mr. Mannix: May I look at the document again, your Honor?

Q. The mere fact you amended this petition didn't change your mind as to what you had in the petition of September 10th, did it, Mr. Arkema?

A. As to the matters alleged.

Q. As to the matters alleged.

In this document that you filed on October 22, 1964, and the petition you filed September 10, 1964, you asked Mr. Bloom be held in contempt of Court, didn't you?

A. I didn't. My clients did.

Q. Well, the petition did, didn't it?

A. It was my clients who signed the petition.

Q. But you didn't feel he should be held in contempt of Court?

A. I didn't say that.

[fol. 100] DR. JORDAN M. SCHER testified:

Direct examination.

By Mr. Eben:

I reside at 300 North State Street, in the City of Chicago and am a medical doctor and psychiatrist licensed to practice in the State of Illinois since 1957.

I am also licensed to practice in the States of New York and Maryland. I graduated from the Medical School at the University of Maryland which is a medical school accredited by the Council on Medical Education of the American Medical Association.

I have a medical specialty of psychiatry which embraces that branch of medicine which has to do with disorders of personality, behavioral problems, problems of retardation; problems, generally speaking, that have to do with mental problems and I have specialized training in that field.

Mr. Mannix: Your Honor, I will stipulate to his qualifications.

The Witness: I know the respondent, S. Edward Bloom and examined him at the request of his lawyers. Two days prior to that, he received psychological tests at my direction by an associate of mine Dr. Reed Martin. These tests are designed to demonstrate essentially Bloom's mental competence in terms of the issue of whether or not his is insane or sane, whether or not he has any kind of organic deficit, a situation by the diagnosis of a character problem, whether there is any deterioration based upon senility; and in general, what an assessment of his personality is.

I personally examined Mr. Bloom.

I obtained a history from him the purpose of which was to get his views of his existence as he sees it and to give me an opportunity to watch how he reacts and to watch [fol. 101] the underlying operation of his thinking as he reports.

In general, his activities have been of a state of self-aggrandizement.

He told me that sometime in June, Miss Owens contacted him by telephone on several occasions. He said she was a practical nurse and called him about making up a will for someone named Melody. He did meet with Miss Owens early in July but seemed confused in telling me this and said he thought it was the first or second of July but he was not sure and had been told it was the 14th but he did not believe it was that late.

He said at that time, she requested a will be made out, and that he had no objection. He made it out or he had his girl, his secretary, put various parts of it together and he then gave it to her for taking to Mr. Melody for his signature and witnessing thereto. She seemed to, according to him, have brought it back the same day and told him there was something wrong or they wanted some changes on the bequests, and also there was something wrong about the attestation clause.

He was struck by her use of that phrase at that time, he told me, but he didn't make any issue of it, but he did wonder whether or not she talked to a lawyer or why she should use such a phrase.

He made the changes she requested and apparently that was the last he saw of it until he received a call from the bank, saying the will was up for probate, I assume, and asking that he come in to discuss it.

Accordingly to what he told me, he said he wondered why they wanted him to come in. He didn't represent anyone involved. He had expected to get a small fee out of it, [fol. 102] but he didn't understand why the bank was interested in calling him in.

The person who spoke to him over the phone indicated to him he might be appointed the lawyer for the bank at that time; and judging from much other kinds of information he told me, I would not be at all surprised that this was a very important thought for him at that moment.

He went to one meeting, which meeting I mentioned, which he made, just as he missed the other meetings, of which he might have considered of lesser importance, because this one was of significance in establishing to himself and present to the world some evidence of prominence.

Another situation, he also made another meeting. Some of the people didn't show up on the first meeting and at the second meeting he was warned—which was about a week after the will was made out, on the 14th, he was warned he would be in some jeopardy if he had filed a petition regarding the will he had in his hand.

The reaction on his part to this was to become quite angry and to take a rather indignant posture very much as one who might be wrongfully attacked. I believe this would be quite like him from my impression.

He went on to further discussions. He had filed the petition and apparently then Court action began in one or another form against him.

Essentially, his behavior, if I can go on—

Q. I am just wondering, I may have caught it, what if anything was said with respect to his interviewing witnesses to the will?

Oh, I am sorry. Yes, he did call in the witnesses, according to him, apparently after the first call he received from [fol. 103] the bank to check out, I guess, to see if everything was in order or something of this sort.

And, apparently following the first meeting with the people at the bank, he had the witnesses back, and he had them swear at a deposition about what occurred, and signing of the will transpired on the 21st day of June rather than anywhere in July.

By Mr. Eben:

Q. Doctor Scher, at my request, have you read the amended petition that is before the Court?

A. Yes, I have.

Q. I show you that petition. This is the original. What I showed you was a copy of it, was it not?

A. Yes.

Q. Would you look through it briefly? Is that the same as the petition I showed you, the amended petition I showed you?

A. Yes, I believe it is.

Q. Also at my request, you examined a copy of a will of one William Melody, dated June 21, 1964, did you not?

A. Yes, I did.

Q. And is the copy identical with People's Exhibit One?

A. It seems to be. From the copy I saw, it looks like it.

Q. Now, you are then familiar, are you not, with the charge which brings Mr. Bloom before the Court, is that right?

A. Yes, I am.

Q. Let me ask you to assume that on August 5, 1964, the respondent, Mr. Bloom, appeared at a meeting, at the bank named as executor in his will, at which time there was present an attorney representing the legatees in a prior will.

[fol. 104] There was also present a number of officials of the bank.

I ask you to assume further that, at that time, this attorney to whom I have just made reference, told the respondent that the testator in the will drawn by the respondent had passed away on July 6, 1964, and that for that period of three weeks prior thereto, approximately three weeks, was unable to communicate with anyone.

I ask you also to assume that this attorney showed to the respondent a letter from a doctor to the same effect, namely: That the testator was unable to communicate.

I would also ask you to assume that respondent was told on this particular occasion by this other attorney, that if

he proceeded any further in the matter of the filing of the petition to admit the will which respondent had drawn into probate, that contempt proceedings would be instituted against him.

Mr. Mannix: I object to this, your Honor. He's assuming facts not in evidence.

The Court: Sustained.

Mr. Eben: My recollection is that is exactly what Mr. Arkema said at that time?

Mr. Mannix: There was no mention of contempt at that time.

Mr. Eben: Strike contempt proceedings would be instituted against him in one form or another.

Q. Now, then, I ask you to assume, also, that within five or six days thereafter, the respondent did, in fact, present the will for admission to probate in this Court.

There is another assumption, I want to engage in: Would you also assume that this attorney who had been talking [fol. 105] with the respondent, stated that, in his opinion, the respondent was unaware of the consequences of his act?

Mr. Mannix: I certainly object to that, your Honor. None of this testimony that counsel is referring to, none of this took place on August 5, 1964.

Mr. Eben: I am talking about testimony here in the trial and I assume that Mr. Arkema was talking about what occurred on the 5th of August.

Mr. Mannix: And I object.

The Court: You are assuming August 5, 1964, in your hypothetical question?

By Mr. Eben:

Q. All right, would you accept that, that on August 5, 1964, in the opinion of this attorney, the respondent seemed to be unaware of the legal consequences of his act?

Mr. Mannix: Again, I object, your Honor. The attorney who testified to these matters did not convey this informa-

tion or communicate this in any way, shape or manner, to the defendant, on August 5.

Mr. Eben: That would completely immaterial whether he conveyed it or not.

The Court: All right, finish the question. Then you may make your objection and supplant any question that is incorrect.

By Mr. Eben:

Q. All right, then, based upon those assumptions, and based upon your examination of the respondent, and including the history, and based upon the testimony which you heard from the stand today from Mrs. Kernene and Miss Cohen, rather, do you have an opinion based on reasonable psychiatric certainty, whether or not when the respondent filed, on August 11th, his petition to admit a will to probate in this Court, he intended to embarrass or obstruct the Court in the administration of justice, and to [fol. 106] place the administration of law in this Court into disrespect?

The Court: Just yes or no. Do you have an opinion?

A. I have an opinion, yes.

The Court: All right, you may answer.

Mr. Eben: Will you state opinion, sir?

The Court: The court first would like to know what the date of that meeting at the bank was.

Mr. Eben: August 5th, I believe.

The Court: Well, I don't know. My memory—that may be and that may not be.

Mr. Eben: I did put it in.

The Court: But can we stipulate whatever date it was?

Mr. Eben: It was August 5th and I have a recollection of including it.

The Court: I think I should rephrase your hypothetical question based on everything you so put in your hypothetical question and the particular respondent's mental capac-

ities. That should be included in there. This is an opinion by this witness.

Mr. Eben: Yes, that's all.

The Court: All right, it includes mental capacity. I understand that in your question. As far as the Court is concerned, I'll let it in.

Mr. Eben: If I understand you correctly, it's his mental capacity I want him to testify to?

The Court: Well, then you do that in your hypothetical question.

Q. Doctor, based upon all of these things which I have asked, including the hypothetical question, your examination, the history, the testimony that you heard today, was the respondent—do you have an opinion as to the respon- [fol. 107] dent's mental capacity to form, and did he form an intent to embarrass this court or obstruct administrative justice?

The Court: I will still allow Dr. Scher can testify as to his mental capacity to form such an intent whether it's embarrassing to the Court or not embarrassing to the Court. That's up to the Court. I first of all want to know the mental condition of the man, whether or not he had the ability to form, based on the hypothetical question you put.

By Mr. Eben:

Q. Do you have such an opinion, based on a reasonable degree of psychiatric certainty whether or not he had the capacity to form intent to embarrass the Court and the administration of justice?

The Court: Well, not to embarrass the Court. Embarrass or not embarrass the Court, did he have the mental capacity?

The Court: You may answer the question, if you have such an opinion.

The Witness: I believe he has the capacity to form such an intent, but I think this needs elaboration, if I may elaborate.

The Court: What is the question you want to ask the witness?

By Mr. Eben:

Q. The question was whether or not the doctor has an opinion based upon his examination as I have outlined and to a reasonable degree of psychiatric certainty as to whether or not, on August 11, 1964, when the petition was filed, whether or not the respondent actually formed an intent to embarrass this Court or impede the administration of justice.

The Court: Let's not testify. It's based on his mental capacity to have an intent.

All right, let's proceed. Go ahead. Ask him.

[fol. 108] Mr. Eben: Based upon the various assumptions and the testimony which you heard and your examination and the history, and your knowledge of the defendant's—the respondent's mental capacity on August 11, 1964, do you have an opinion as to whether or not he intended to obstruct the administration of justice in this Court or embarrass the Court?

Mr. Gelderman: Your Honor, please, he did not say what his mental capacity was on that day, and until his mental capacity—

The Court: August 5th, we're talking about?

Mr. Eben: I said August 11th.

The Court: You changed to August 11th now?

Mr. Eben: August 11th was the day he filed the petition. August 5th was when we're talking about what happened at the bank.

Mr. Mannix: Your Honor, if I may, with regard to the hypothetical question, Mr. Arkema was brought into the hypothetical question, the officials from the bank were brought in.

The Court: Was that August 11th?

Mr. Mannix: This was August 5th.

The Court: That's what I maintain. I asked you a minute ago. Now he's on August 11th.

Mr. Eben: No, no. What I said was the bank meeting was August 5th, and it was August 5th, that's what Mr. Arkema testified to.

The petition was filed August 11th six days thereafter. That's why I am interrogating the doctor on August 11th and asking him to assume to the fact of Mr. Arkema, plus all other things. But the contempt charge is August 11th.

Mr. Mannix: That's true.

Mr. Eben: So what he did on August 5th would not be covered by the petition, his intent on August 11th, when [fol. 109] he came over to put the petition in was August 11th.

Mr. Gelderman: May I offer this observation to the Court? Based upon his mental condition, and the doctor hasn't testified to what his mental condition was on that day, so how can the doctor testify as to an obstruction of justice when the record is entirely barren from the witness, the doctor, what his condition was.

The Court: I think the question was put, did he have the mental capacity to form intent.

Mr. Eben: That's correct.

The Court: Now we will try to find out whether he thinks, in his judgment, based on all of these things, what the man's intention was based on all those facts.

Mr. Eben: That's right.

The Court: Let him testify.

By Mr. Eben:

Q. Do you have such an opinion, based on his Honor's language?

A. I have such an opinion, I believe, yes.

Q. Would you state to the Court what this is?

The Witness: My opinion is this man did not form an intent to defraud anyone on this occasion.

Q. You are referring to August 11, 1964?

Mr. Gelderman: I object, if the Court please. Not responsive to the question. There was no question of defrauding anyone.

Mr. Eben: Let's put the question to you again. The intent about which we inquired is his intent in embarrassing the Court?

A. Right.

Q. And in impeding the due administration of justice; you understand that?

A. Yes.

Q. Now, do you have an opinion?

[fol. 110] A. It is my opinion he did not intend to embarrass the Court or impede its administration of justice.

ARGUMENT BY MR. MANNIX

Mr. Mannix: May it please the Court:

At the completion of this trial last Thursday, and, at the completion of all of the evidence, your Honor must have been found wondering, as I was found wondering, just what the defense is in this case.

The defense has failed to produce any evidence or any witnesses in contradiction of the People's case. The defense has failed even to produce the defendant.

Mr. Eben: That may be objectionable, if the Court please.

As your Honor knows, this type of hearing is said sometimes to be quasi-criminal. There is a gray area in these cases where you can't tell whether the civil laws apply or the criminal laws apply, with reference to the State's Attorney. It may be reversible error in a criminal case.

The Court: It is a matter of argument.

Mr. Eben: Excuse me, your Honor.

The Court: It is a matter of argument. You are objecting to the argument.

Mr. Eben: No, your Honor. It is a matter of law.
[fol. 111] The Court: You can reply to that.
Mr. Eben: All right.

Certificate of correctness of the report of the proceedings.

Certificate of Clerk of the Circuit Court of Cook County, Illinois that the foregoing is the Report of Proceedings marked Volume II of the record on appeal.

[fol. 112]

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

Docket No. 39325—Agenda 46—May, 1966

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

v.

S. EDWARD BLOOM, Appellant.

OPINION—Filed September 23, 1966

Mr. Chief Justice Klingbiel delivered the opinion of the court:

On petition by the State's Attorney of Cook County the appellant S. Edward Bloom was held in contempt of court for filing a spurious will for probate. He was sentenced to confinement in the county jail for a period of 24 months. In his direct appeal to this court he contends that he was denied the constitutional right to a jury trial, that the sentence is excessive, that prejudicial argument was made by the prosecutor, that the petition was not properly verified and that by taking information and evidence on the merits in chambers prior to trial the court committed prejudicial error.

The State's Attorney's amended petition, filed on November 18, 1964, alleged in substance that William A. Melody died on July 6, 1964, that thereafter Pauline Owens, a practical nurse for the decedent, engaged defendant, an attorney, to prepare and cause to be signed a purported will of the decedent bearing the date June 21, 1964, and that defendant, knowing the document to be false, presented it for admission to probate. Hearings were held in February, 1965, at which the evidence showed beyond dispute that defendant prepared the document and offered it for probate knowing it was prepared after the testator's death. It is unnecessary to relate the details here, for defendant concedes that the evidence is sufficient to support the finding. He maintains, however, that the alleged conduct, if true, would constitute the crime of forgery punishable by imprisonment from one to fourteen years, that it would be an indictable offense in a prosecution for which he would be entitled to a jury trial, and that since he can be punished, as here, by a severe prison sentence he was entitled to a jury trial in the present contempt proceeding.

We cannot accept the contention. However serious it may be, a criminal contempt is an offense against the court as an organ of public justice, not a violation of the criminal law, and the right to trial by jury is not available. (*People ex rel. Martin* v. *Panchire,* 311 Ill. 622; *People* v. *Severinghaus,* 313 Ill. 456.) The reason for the rule is not that a contempt is comparatively petty or trivial but that a summary proceeding for punishment is essential [fol. 113] to performance of the judicial function. "To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency." (*In re Debs,* 158 U.S. 564, 595, 39 L. Ed. 1092, 1106.) The reason exists with equal force whether the offense is petty or grave. A test which would make the right to a jury trial depend upon whether the contemnor's conduct was serious or petty—or a rule which would limit the penalty which could be im-

posed, simply because a jury trial was not had or waived (*cf. dictum* in *Cheff* v. *Schnackenberg,* 384 U.S. 373, 16 L. Ed. 2d 629, 634)—would lead to nothing but incongruity and confusion, and would have no relation whatever either to the nature of the proceeding, or to the purpose of trial by jury.

A contempt proceeding is not a criminal prosecution but a proceeding to vindicate the dignity of the court and enforce its orders. The power to punish in such cases does not depend on constitutional or legislative grant but is inherent in all courts as necessary for self-protection. It is an essential auxiliary to the administration of the law. (*People ex rel. Brundage* v. *Peters,* 305 Ill. 223.) The nature of contempt proceedings as distinguished from criminal prosecutions has long been recognized. Thus in 1812 the United States Supreme Court, in holding the judiciary could not exercise a common-law criminal jurisdiction, explained the difference as follows: "Certain implied powers must necessarily result to our Courts of justice from the nature of their institution. But jurisdiction of crimes against the state is not among those powers. To fine for contempt—imprison for contumacy—inforce the observance of order, *etc.,* are powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others; and so far our Courts no doubt possess powers not immediately derived from statute; but all exercise of criminal jurisdiction in common law cases we are of opinion is not within their implied powers." (*United States* v. *Hudson and Goodwin,* 7 Cranch 32, 3 L. Ed. 259.) Since the time of the *Hudson* case there has been a long unbroken line of decisions, both in this court (see *People* v. *Goss,* 10 Ill. 2d 533, 548,) and the Supreme Court of the United States (see *Green* v. *United States,* 356 U.S. 165, 183, 2 L. Ed. 2d 672, 687,) declaring and re-affirming that criminal contempts are not subject to jury trial as a matter of constitutional right. And the exercise of summary contempt power is not restricted to offenses that may be classified as "trivial" or "petty" but applies as well—perhaps its

[fol. 114] exercise is even more important—where the offense is a serious one. (*United States* v. *Barnett*, 376 U.S. 681, 12 L. Ed. 2d 23.) Since there now exists a right of review in contempt proceedings, adequate protection is afforded against errors and abuses in a trial before the judge. The history and reasons for the rule applied here are extensively set forth by the opinion in the *Barnett* case and need not be further discussed here.

The remaining contentions are of relatively less importance and warrant little discussion. The defendant's objection that the sentence is excessive is supported by no reasons on the merits. He asserts merely that he could be sentenced only for such period as is provided for petty crimes, or misdemeanors, and that the maximum sentence to imprisonment other than to a penitentiary is one year. There is no merit in the position. Provisions of the Criminal Code relied upon apply only to offenses defined in the Code, not to contempts of court. *People* v. *Stollar*, 31 Ill. 2d 154, 159.

It appears that shortly after the spurious will was offered for probate, the court, on motion of one of the heirs, appointed an *amicus curiae* to investigate the conditions attending its execution. A report was subsequently delivered to the judge but was not offered to defense counsel for examination until the trial had begun. After counsel had perused the report he was required to return it. The report was not made part of the record. Without relating its contents the defendant argues that his right to due process was violated by this "private investigation on the part of the court," by the failure to call the investigator as a witness; and by the court's refusal to make the report a part of the record on appeal.

This contention is likewise without merit. The record does not show, nor does the defendant indicate, how the report and its presentation to the judge worked any prejudice or harmed him in any way. The appointment of an *amicus curiae* to make an investigation has heretofore been recognized as proper (*People* v. *Goss*, 10 Ill. 2d 533) and the

evidence, all of which was heard in open court, not only is ample to sustain the finding but is largely undisputed by defendant.

Once again relying upon criminal cases and provisions of the Criminal Code, the defendant insists that the judgment should be reversed because of a comment by the State's Attorney in his final argument to the court. In his argument the latter observed as follows: "At the comple- [fol. 115] tion of this trial last Thursday, and, at the completion of all of the evidence, your Honor must have been found wondering, as I was found wondering, just what the defense is in this case. The defense has failed to produce any evidence or any witnesses in contradiction of the People's case. The defense has failed even to produce the defendant."

It is contended the reference to defendant's failure to testify deprived him of a fair trial and violated the statute declaring, in part, that "a defendant in any criminal case or proceeding shall only at his own request be deemed a competent witness, and his neglect to testify shall not create any presumption against him, nor shall the court permit any reference or comment to be made to or upon such neglect." (Ill. Rev. Stat. 1963, chap. 38, par. 734.) We do not think reversible error has been shown. The statute does not prohibit the prosecution from referring to the testimony of its own witnesses and commenting that such testimony has not been contradicted. (*People* v. *Baker*, 53 Ill. App. 2d 421.) The case was tried by the court, of course sitting without a jury, and while the remark about the failure to "produce" the defendant may have been improper, it does not appear that the judge was influenced by it. The evidence was such that there could not reasonably have been any other finding than guilty, and there is no presumption that the judge was influenced by the comment. Under such circumstances the argument, if improper, was not prejudicial. *People* v. *Corry*, 349 Ill. 122, 126-127.

Defendant finally complains that the petition upon which he was tried was insufficient because it was verified mostly

on "information and belief" instead of being positively verified. We have examined the petition, as well as subsequent proceedings in the case, and find that any defects therein are matters of form only and have been adequately cured. The petition was sufficient to bring the facts of the alleged offense to the attention of the court, and defendant's contention must be rejected. Cf. *Flannery* v. *People*, 225 Ill. 62, 68-69.

From a careful consideration of the record we can find no reversible error. The judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

[fol. 116]

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

No. 39325

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee,

vs.

S. EDWARD BLOOM, Appellant.

In the Matter of the ESTATE OF WILLIAM A. MELODY, DECEASED,

Appeal from Circuit Court, Cook County
64 P 6268

JUDGMENT—September 23, 1966

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

[fol. 117] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 118]

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1966

S. EDWARD BLOOM, Petitioner,

vs.

ILLINOIS.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—December 20, 1966

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the aboye-entitled cause be, and the same is hereby, extended to and including Feb'y 18th, 1967.

Tom Clark, Associate Justice of the Supreme Court of the United States.

Dated this 20th day of December, 1966

[fol. 119]

SUPREME COURT OF THE UNITED STATES

No. 1070, October Term, 1966

S. EDWARD BLOOM, Petitioner,

v.

ILLINOIS.

ORDER ALLOWING CERTIORARI—April 17, 1967

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT, U. S.
FILED
FEB 16 1967
JOHN F. DAVIS, CLERK

No. ~~1070~~ 52

In the

Supreme Court of the United States

OCTOBER TERM, 1966

S. EDWARD BLOOM,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

ANTHONY BRADLEY EBEN
One North LaSalle Street
Chicago, Illinois 60602

HERBERT F. FRIEDMAN
188 West Randolph Street
Chicago, Illinois 60602
Counsel for Petitioner

The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No.

S. EDWARD BLOOM,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above-entitled cause on September 23, 1966.

Opinion Below

The opinion of the Supreme Court of Illinois is reported in 220 N.E. 2d 475; .... Ill. 2d ..... .

Jurisdiction

The judgment of the Supreme Court of Illinois was entered on September 23, 1966. On December 20, 1966, Mr. Justice Clark of this Court entered an order herein extending the time for filing a petition for writ of certiorari to and including February 18, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

Questions Presented

1. Is a defendant in a State Court trial for criminal contempt entitled under the Fourteenth Amendment to the Constitution of the United States to a trial by jury particularly where the conduct alleged as contempt is not petty or trivial but is a felony under the law of the State?

2. Do not *Cheff* v. *Schnackenberg* (1966) 384 U. S. 373 and the Fourteenth Amendment to the Constitution of the United States require jury trials in State Court criminal contempt proceedings where the sentence imposed amounts to two years?

3. Is a State Court in imposing a sentence for criminal contempt limited by the Fourteenth Amendment to the Constitution of the United States to such sentence as it could impose only for petty offenses under the law of the State?

4. Does not the Fourteenth Amendment to the Constitution of the United States prohibit a State Court trial judge presiding at a contempt trial from conducting a private investigation into an alleged contemner's conduct and receiving a secret report with respect thereto *in camera* prior to such trial?

5. Does not the comment of a State Court prosecutor on the failure of an accused to take the stand in his own behalf deprive the accused of his rights to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States?

Constitutional and Statutory Provisions

The Constitution of the United States:

Amendment V. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury * * * nor shall any person be * * * deprived of life, liberty or property, without due process of law * * *"

Amendment VI. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the Statee and district wherein the crime shall have been committed, * * * and to be informed of the nature and cause of the accusation * * *."

Amendment XIV. "* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Constitution of the State of Illinois:

Article II, Section 5, "The right of trial by jury as heretofore enjoyed shall remain inviolate * * *."

Article II, Section 9, "In all criminal prosecutions, the accused shall have the right to * * * a speedy public trial by an impartial jury * * *."

Illinois Criminal Code of 1961. S.H.A. ch. 38:

Section 1 - 3. "No conduct constitutes an offense unless it is described as an offense in this Code or another statute of this State. However, this provision does not affect the power of the court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment or decree."

Section 2-11. "'Misdemeanor' means any offense other than a felony and includes conduct prohibited by a statute which provides no penalty for its violation."

Section 1-7(e). "All sentences to the penitentiary shall be for an indeterminate term. * * *"

Section 1-7(f) "All sentences of imprisonment other than to a penitentiary shall be for a definite term which shall not exceed one year."

Section 1-7(j). "The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided may sentence the offender to a term of imprisonment not to exceed a year or a fine not to exceed $1,000 or both."

Section 17-3.(a) "A person commits forgery when, with intent to defraud, he knowingly: (1) Makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority; or (2) issues or delivers such document knowing it to have been thus made or altered; or (3) Possesses, with intent to issue or deliver, any such document knowing it to have been thus made or altered.

(b) An intent to defraud means an intention to cause another to assume, create, transfer, alter or terminate any right, obligation, or power with reference to any person or property.

(c) A document apparently capable of defrauding another includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated.

(d) Penalty. A person convicted of forgery shall be fined not to exceed $1,000 or imprisoned in the penitentiary for one to 14 years or both."

Statement*

1. This matter arose in the Probate Division of the Circuit Court of Cook County, Illinois, upon the amended petition of the State's Attorney of that county charging petitioner with conduct claimed to constitute criminal contempt of that court (Abst. 49-52). The conduct relied upon as a basis for this charge was the presentation by petition of an alleged spurious Will of one Melody for admission to probate when he knew or should have known that such Will had been prepared and falsely executed and witnessed after Melody's death (Abst. 50-52). The same conduct, if true, was violative of the provisions of section 17-3 of the Illinois Criminal Code of 1961 and punishable by sentence of one to fourteen years and/or a fine not to exceed $1000 *S.H.A. Ch. 38, § 17-3.* No proceeding, however, was instituted against petitioner under the Criminal Code. In such event, petitioner would have been entitled to a jury trial. Illinois Constitution, Art. II §§ 5 and 9; *S.H.A. Ch. 38*; § 103-6.

The issues posed by the amended petition could not be tried summarily, nor were they, since they involved proof by respondent of facts relating to the preparation, execution and witnessing of the Will outside the presence, constructive or otherwise, of the trial court and therefore beyond its personal knowledge and observation. When the cause came on for full trial, petitioner timely moved for a jury trial which motion was denied (Abst. 86).

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* Petitioner seeks a writ of certiorari here on three claims of denial of constitutional rights. In order to more clearly delineate these claims, he sets forth the facts with respect to each separately in this Statement.

During the trial petitioner by testimony raised a question of fact as to his lack of malevolent intent, a necessary element and requisite of criminal contempt under Illinois law* (Abst. 93-110). After hearing all the evidence at a trial lasting approximately 10 days, the trial court found petitioner's conduct in the above respects to be in derogation of the court's dignity and its orderly processes (Abst. 78). It thereupon adjudged him in criminal contempt and sentenced him to the Cook County jail for a period of 24 months (Abst. 78).

2. Approximately two months prior to the filing of respondent's petition (Abst. 44) and three months prior to their amended petition (Abst. 49), the trial court upon the petition of an heir claiming under a prior Will of Melody, (Abst. 4-17) appointed one Fink as *amicus curiae* in this Estate (Abst. 17). Under the terms of this order, Fink was authorized and empowered to investigate all matters pertaining to the preparation, execution and filing of the Melody Will presented by petitioner and to prosecute any fraud which he discovered attending same and to make "full report to the Court from time to time" (Abst. 18).

More than 30 days before any petition was filed by respondent against petitioner, the trial court entered its order on Fink to file instanter his report covering his investigation to that date (Abst. 40). This report was filed with the trial court itself and remained continuously in its own possession despite petitioner's efforts to examine it prior to trial (Abst. 71, 89, 90). In this connection the trial court granted petitioner full access to the files and court records which it had impounded

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* *People* v. *Koniecki,* (1961) 28 Ill. App. 2d 488; *People* v. *Hille,* (1915) 192 Ill. App. 139.

but did not disclose that it had withheld the Fink report therefrom (Abst. 76).

At the trial, petitioner was permitted limited examination of this report and then only insofar as it bore upon the testimony of any witness testifying for respondent and as an aid to cross-examination of such witness (Abst. 89, 90). Fink was not called as a witness by the respondent. After judgment, the trial court denied petitioner's motion to turn the Fink report over to the Clerk of the Court in order for it to be made part of the record on appeal (Abst. 83, 84).

3. After the presentation of all the evidence, the State's Attorney in his summation commented on the failure of petitioner to testify in his own behalf. (Abst. 110). On objection by petitioner, the trial court ruled such comment to be proper argument (Abst. 110).

4. Upon direct appeal of petitioner's contempt conviction to the Supreme Court of Illinois, petitioner asserted as to all of the above matters a deprivation of his constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States. That court, however, affirmed the conviction. In so doing, it held that petitioner was not entitled to a jury trial on the authority of *Green* v. *United States*, (1958) 356 U. S. 165, 183 and *United States* v. *Barnett*, (1964) 376 U.S. 681 (App. 3a). As to petitioner's arguments directed to the use of the Fink report and the prosecutor's improper argument, the Supreme Court of Illinois never reached the constitutional portion thereof and decided the questions involved purely on the basis of petitioner's failure to show prejudice (App. 4a, 5a).

Reasons for Granting the Writ.

1. The decision of the Supreme Court of Illinois in affirming petitioner's sentence of 24 months for criminal contempt after a trial in which he was denied a jury deprives petitioner of his rights and privileges under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. That decision was based largely on decisions of this Court including *Green* v. *United States,* (1958) 356 U. S. 165 and *United States* v. *Barnett,* (1964) 376 U. S. 681 which were firmly relied upon as establishing that criminal contempts "are not subject to jury trial as a matter of constitutional right" and that the exercise of summary contempt power is not restricted to "trivial" or "petty" offenses (App. 3a).* In these respects, the decision overlooks important modifications in the area of trials of criminal contempts as recently set forth by this Court in *Cheff* v. *Schnackenberg* (1966) 384 U.S. 373, and appears to conflict with it.

In *Cheff,* the Chief Justice and Mr. Justices Clark, Brennan and Fortas held that a jury trial is not a matter of right in a contempt proceeding only because such a proceeding is "equivalent to a procedure to prosecute a petty offense" which under federal law does not require a jury trial. Stating that criminal contempt of itself does not "warrant treatment otherwise," these four Justices held that "sentences exceeding six months for criminal contempt may not be imposed by federal courts

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* The power to deal with contempt was not exercised *summarily* in the case at bar. The contempt charged was not disobedience of a Court order as in *Barnett* nor within the personal knowledge or observations of the trial court. It is difficult to tell exactly why the Illinois Supreme Court made this reference at all.

unless a jury trial has been received or waived." This result was reached because 18 U.S.C. Sec. 1 defines a petty offense as any misdemeanor, the penalty for which does not exceed imprisonment for six months. In view of this, the six month sentence imposed in *Cheff* was affirmed. Mr. Justice Harlan, joined by Mr. Justice Stewart, concurred in this decision but on the different ground that there is not right at all to a jury trial in criminal contempts. In this connection and in opposition thereto, they described "the Court's decision" as being one "to extend the right to jury trial to criminal contempts ending in sentences greater than six months" which they claimed was contrary to prior decisions of this Court. Mr. Justice Douglas and Black dissented on the principal grounds that all criminal contempts are crimes and that therefore the right to trial by jury in such cases is guaranteed.

The *Cheff* case thus discloses the present alignment in this Court on this subject as follows:

a) Six Justices hold that jury trials are constitutionally required in all federal criminal contempt cases where the sentence imposed is over six months. Of these six, two would require jury trial in such contempt cases no matter what the amount of sentence and

b) Two Justices do not believe there is any right at all to a jury trial in such cases. Mr. Justice White did not sit on *Cheff*.

It thus appears that if *Cheff* has application here, the decision below is wrong on two constitutional counts. First, petitioner could not have been sentenced to more

than 6 months without being accorded a jury trial.* Secondly, the contempt charged was not petty since it constituted a felony under the Illinois Criminal Code. *S.H.A. Ch. 38, § 17-3.* Because of this, it is urged that this case presents more serious constitutional questions than *Cheff*. There, the question as to the right to jury trial for a criminal contempt also amounting to a felony could not arise because 18 U.S.C. § 3691 expressly provides such right in cases where the contemptuous conduct charged constitutes "a criminal offense under any Act of Congress, or under the laws of any state in which it was done or omitted." This fact underlines the holding *Cheff* equating the contempt there reviewed with petty offenses. If such equation was not possible because the contempt charged constituted a felony and if 18 U.S.C. Sec. 3691 had not been enacted, it is evident from the Court's reasoning in *Cheff* that a jury trial in any such case, regardless of sentence, is a matter of constitutional right.

As heretofore noted, the Supreme Court of Illinois determined petitioner's claim of deprivation of his constitutional right to a jury trial by firm reliance on

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* Under Illinois law, if *Cheff* were to be followed, all criminal contempts would be tried to a jury unless waived. This follows from the fact that the four justices in *Cheff* affirming the six month sentence did so only because petty crimes (punishable by six months or less), which they analogized to criminal contempts, are federally triable without juries. In Illinois no such distinction is made and all crimes, petty or otherwise, require jury trials. Article II, Secs. 5 and 9 of the Illinois Constitution. *S.H.A. Ch. 38, Secs. 2-11, 2-12, 103-6, 115-1.* It is therefore evident that because of this and the above reasoning, a trial by jury was here required without regard at all to the amount of punishment imposed.

decisions of this Court interpreting the Constitution of the United States in this field. This, it is urged, amounts to its tacit recognition of the applicability of the United States Constitution to the questions here involved. In any event, the Illinois Supreme Court did not disavow such application although aware of *Gheff*. Even if it did, it is contended that the Fourteenth Amendment to the Constitution provides petitioner with protection in this cause. In this connection, it is pointed out that this Court in recent years has construed that Amendment as incorporating the Bill of Rights. *Griffin* v. *California,* (1965) 380 U. S. 609; *Pointer* v. *State of Texas* (1965) 380 U. S. 400; *Estes* v. *State of Texas,* (1965) 381 U. S. 532; *Gideon* v. *Wainwright* (1963) 372 U. S. 335. This principle was first enunciated by Mr. Justice Black in his dissent in *Adamson* v. *California* (1947) 332 U. S. 46, 68. In 1965, *Adamson* was expressly overruled by *Griffin* indicating that the minority view is tending to become that of the majority.

2. The action of the trial judge in investigating petitioner's conduct and in receiving a secret report relative thereto *in camera,* all prior to the institution of any proceeding against petitioner, deprived petitioner of his constitutional rights under the Fifth and Fourteenth Amendments to the Constitution of the United States. In support of this contention petitioner relies on *In re Murchison,* (1955) 349 U. S. 133, a case not squarely in point on its facts but pertinent and controlling, it is urged, on the principles announced. In that case, this Court held it to be a violation of the Due Process Clause for a state court to try in contempt proceedings a witness it had called before it when it was acting as an investigative one-man grand jury. In so determining the Court stated, p. 136:

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter of due process of law.' *Tumey* v. *Ohio,* 273 U.S. 510, 532, 71 L.ed. 749, 758, 47 S.Ct. 437, 50 A.L.R. 1243. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt* v. *United States,* 348 U.S. 11, 99 L.ed., 75 S.Ct. 11."

And at p. 138, this Court stated:

"As a practical matter it is difficult if not impossible for a judge to free himself from the influence of what took place in his 'grand jury' secret session. His recollection of that is likely to weigh far more heavily with him than any testimony given in the open hearings."

The Supreme Court of Michigan was thereupon reversed.

All of the above poses the due process question of whether a court which has itself investigated a criminal contempt prior to trial can be expected to erase inferences and conclusions arising from matters learned during the investigation. Will it be able to make any nice distinction

between preponderance of evidence and proof beyond reasonable doubt as required in criminal contempt trials? If the evidence on the criminal contempt charge is different from that which it learned of through its investigation, will it be able to expunge from mind or memory that which it learned of prior to trial? And how could anyone know, particularly since the trial court refused to release the entire Fink report so that it could be made part of the Record on Appeal?

3. The comment of the prosecutor as to petitioner's failure to testify violated petitioner's constitutional rights under the Fourteenth Amendment. In support of this contention, petitioner relies on *Griffin* v. *California,* (1965) 380 U.S. 609, flatly holding that the self-incrimination guaranty of the Fifth Amendment in its bearing on the states, by reason of the Fourteenth Amendment, forbids comment by the prosecution on an accused's silence. In so doing, it relied on the following reasoning in *Wilson* v. *United States,* (1893) 149 U.S. 60, which has particular cogency here in view of petitioner's psychiatric testimony. In *Wilson,* it is stated at p. 66:

> "* * * The act was framed with a due regard also to those who might prefer to rely upon the presumption of innocence which the law gives to every one, and not wish to be witnesses. It is not every one who can safely venture on the witness stand though entirely innocent of the charge against him. Excessive timidity, nervousness when facing others and attempting to explain transactions of a suspicious character, and offenses charged against him will often confuse and embarrass him to such a degree as to increase rather than remove prejudices against him. It is not every one, however honest, who would, therefore, willingly be placed on the witness stand. The statute, in tenderness to the weakness of those who

from the causes mentioned might refuse to ask to be a witness, particularly when they may have been in some degree compromised by their association with others, declares that the failure of the defendant in a criminal action to request to be a witness shall not create any presumption against him."

4. The decision of the Supreme Court of Illinois is believed to be erroneous and contrary to the modern concept of the nature of criminal contempt and how it is to be tried as enunciated by this Court in *Cheff*. Its end result denies fundamental constitutional rights. If carried to its ultimate conclusion, the decision permits the trial of serious crimes under the guise of criminal contempt by a court which in substance is really the aggrieved party and all without the protection of jury trial simply because in a given case the offense also contains contempt elements. It follows also that, under such circumstances, an accused could be severely punished twice for the same conduct if indictment, trial and conviction of the criminal offense followed. Constitutional limitations under the Fifth Amendment as to double jeopardy afford no protection to one so accused. *O'Malley* v. *United States*, (C.A. 8, 1942) 128 F. 2d 676, reversed on other grounds, 317 U.S. 412; *United States* v. *Mirra*, (D.C. N.Y. 1963) 220 F. Supp. 361.

Other important questions also arise in connection with this decision. Thus, to what extent may a trial court punish for criminal contempt? What limitations should be imposed upon it in this respect? Could a trial court impose the death penalty merely because a first degree murder occurred in an area contiguous to the courtroom and therefore in derogation of the Court? Could it do so even if trial of the contempt were by jury? Petitioner concedes the unlikelihood of such an occurrence,

but if the power exists, the possibility of its exercise is always present. It is urged that the Fourteenth Amendment to the Constitution of the United States affords this Court a proper basis for the protection of elemental and fundamental constitutional rights in this controversial field.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ANTHONY BRADLEY EBEN
HERBERT F. FRIEDMAN
Counsel for Petitioner.

APPENDIX

OPINION

Docket No. 39325—Agenda 46— May, 1966.

The People of the State of Illinois, Appellee, v. S. Edward Bloom, Appellant.

Mr. Chief Justice Klingbiel delivered the opinion of the court:

On petition by the State's Attorney of Cook County the appellant S. Edward Bloom was held in contempt of court for filing a spurious will for probate. He was sentenced to confinement in the county jail for a period of 24 months. In his direct appeal to this court he contends that he was denied the constitutional right to a jury trial, that the sentence is excessive, that prejudicial argument was made by the prosecutor, that the petition was not properly verified and that by taking information and evidence on the merits in chambers prior to trial the court committed prejudicial error.

The State's Attorney's amended petition, filed on November 18, 1964, alleged in substance that William A. Melody died on July 6, 1964, that thereafter Pauline Owens, a practical nurse for the decedent, engaged defendant, an attorney, to prepare and cause to be signed a purported will of the decedent bearing the date June 21, 1964, and that defendant, knowing the document to be false, presented it for admission to probate. Hearings were held in February, 1965, at which the evidence showed beyond dispute that defendant prepared the document and offered it for probate knowing it was prepared after the testator's

death. It is unnecessary to relate the details here, for defendant concedes that the evidence is sufficient to support the findings. He maintains, however, that the alleged conduct, if true, would constitute the crime of forgery punishable by imprisonment from one to fourteen years, that it would be an indictable offense in a prosecution for which he would be entitled to a jury trial, and that since he can be punished, as here, by a severe prison sentence he was entitled to a jury trial in the present contempt proceeding.

We cannot accept the contention. However serious it may be, a criminal contempt is an offense against the court as an organ of public justice, not a violation of the criminal law, and the right to trial by jury is not available. (*People ex rel. Martin* v. *Panchire,* 311 Ill. 622; *People* v. *Severinghaus,* 313 Ill. 456.) The reason for the rule is not that a contempt is comparatively petty or trivial but that a summary proceeding for punishment is essential to performance of the judicial function. "To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency." (*In re Debs,* 158 U.S. 564, 595, 39 L. Ed. 1092, 1106.) The reason exists with equal force whether the offense is petty or grave. A test which would make the right to a jury trial depend upon whether the contemnor's conduct was serious or petty—or a rule which would limit the penalty which could be imposed, simply because a jury trial was not had or waived (*cf. dictum in Cheff* v. *Schnackenberg,* 384 U.S. 373, 16 L. Ed. 2d 629, 634)—would lead to nothing but incongruity and confusion, and would have no relation whatever either to the nature of the proceeding, or to the purpose of trial by jury.

A contempt proceeding is not a criminal prosecution but a proceeding to vindicate the dignity of the court and enforce its orders. The power to punish in such cases does

not depend on constitutional or legislative grant but is inherent in all courts as necessary for self-protection. It is an essential auxiliary to the administration of the law. (*People ex rel. Brundage* v. *Peters,* 305 Ill. 223.) The nature of contempt proceedings as distinguished from criminal prosecutions has long been recognized. Thus in 1812 the United States Supreme Court, in holding the judiciary could not exercise a common-law criminal jurisdiction, explained the difference as follows: "Certain implied powers must necessarily result to our Courts of justice from the nature of their institution. But jurisdiction of crimes against the state is not among those powers. To fine for contempt—imprison for contumacy—inforce the observance of order, *etc.,* are powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others; and so far our Courts no doubt possess powers not immediately derived from statute; but all exercise of criminal jurisdiction in common law cases we are of opinion is not within their implied powers." (*United States* v. *Hudson and Goodwin,* 7 Cranch 32, 3 L. Ed. 259.) Since the time of the *Hudson* case there has been a long unbroken line of decisions, both in this court (see *People* v. *Goss,* 10 Ill. 2d 533, 548,) and the Supreme Court of the United States (see *Green* v. *United States,* 356 U.S. 165, 183, 2 L. Ed. 2d 672, 687,) declaring and re-affirming that criminal contempts are not subject to jury trial as a matter of constitutional right. And the exercise of summary contempt power is not restricted to offenses that may be classified as "trivial" or "petty" but applies as well—perhaps its exercise is even more important—where the offense is a serious one. (*United States* v. *Barnett,* 376 U.S. 681, 12 L. Ed. 2d 23.) Since there now exists a right of review in contempt proceedings, adequate protection is afforded against errors and abuses in a trial before the judge. The history and reasons for the rule

applied here are extensively set forth by the opinion in the *Barnett* case and need not be further discussed here.

The remaining contentions are of relatively less importance and warrant little discussion. The defendant's objection that the sentence is excessive is supported by no reasons on the merits. He asserts merely that he could be sentenced only for such period as is provided for petty crimes, or misdemeanors, and that the maximum sentence to imprisonment other than to a penitentiary is one year. There is no merit in the position. Provisions of the Criminal Code relied upon apply only to offenses defined in the Code, not to contempts of court. *People* v. *Stollar,* 31 Ill. 2d 154, 159.

It appears that shortly after the spurious will was offered for probate, the court, on motion of one of the heirs, appointed an *amicus curiae* to investigate the conditions attending its execution. A report was subsequently delivered to the judge but was not offered to defense counsel for examination until the trial had begun. After counsel had perused the report he was required to return it. The report was not made part of the record. Without relating its contents the defendant argues that his right to due process was violated by this "private investigation on the part of the court." by the failure to call the investigator as a witness; and by the court's refusal to make the report a part of the record on appeal.

This contention is likewise without merit. The record does not show, nor does the defendant, indicate, how the report and its presentation to the judge worked any prejudice or harmed him in any way. The appointment of an *amicus curiae* to make an investigation has heretofore been recognized as proper (*People* v. *Goss,* 10 Ill. 2d 533) and the evidence, all of which was heard in open court, not only is ample to sustain the finding but is largely undisputed by defendant.

Once again relying upon criminal cases and provisions of the Criminal Code, the defendant insists that the judgment should be reversed because of a comment by the State's Attorney in his final argument to the court. In his argument the latter observed as follows: "At the completion of this trial last Thursday, and, at the completion of all of the evidence, your Honor must have been found wondering, as I was found wondering, just what the defense is in this case. The defense has failed to produce any evidence or any witnesses in contradiction of the People's case. The defense has failed even to produce the defendant."

It is contended the reference to defendant's failure to testify deprived him of a fair trial and violated the statute declaring, in part, that "a defendant in any criminal case or proceeding shall only at his own request be deemed a competent witness, and his neglect to testify shall not create any presumption against him, nor shall the court permit any reference or comment to be made to or upon such neglect." (Ill. Rev. Stat. 1963, chap. 38, par. 734.) We do not think reversible error has been shown. The statute does not prohibit the prosecution from referring to the testimony of its own witnesses and commenting that such testimony has not been contradicted. (*People* v. *Baker,* 53 Ill. App. 2d 421.) The case was tried by the court, of course sitting without a jury, and while the remark about the failure to "produce" the defendant may have been improper, it does not appear that the judge was influenced by it. The evidence was such that there could not reasonably have been any other finding than guilty, and there is no presumption that the judge was influenced by the comment. Under such circumstances the argument, if improper, was not prejudicial. *People* v. *Corry,* 349 Ill. 122, 126-127.

Defendant finally complains that the petition upon which he was tried was insufficient because it was verified mostly on "information and belief" instead of being positively verified. We have examined the petition, as well as subsequent proceedings in the case, and find that any defects therein are matters of form only and have been adequately cured. The petition was sufficient to bring the facts of the alleged offense to the attention of the court, and defendant's contention must be rejected. Cf. *Flannery* v. *People*, 225 Ill. 62, 68-69.

From a careful consideration of the record we can find no reversible error. The judgment of the circuit court of Cook County is affirmed.

JUDGMENT AFFIRMED.

FILED
MAR 17 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1052

S. EDWARD BLOOM,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,

EDWARD J. HLADIS,
Chief of Civil Division,
500 Chicago Civic Center,
Chicago, Illinois 60602,
Counsel for Respondent.

GERALD J. MANNIX,
RONALD BUTLER,
Assistant State's Attorney,
Of Counsel.

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OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported as *The People of the State of Illinois* v. *Bloom,* 35 Ill. 2d 255, 220 N. E. 2d 475, decided on September 23, 1966, and reprinted at Appendix 1a of the Petition.

JURISDICTION.

The jurisdiction of this Court is invoked by petitioner pursuant to 28 U. S. C. § 1257(3).

QUESTIONS PRESENTED.

1. Is the imposition by a state court of a two year sentence for criminal contempt of court without a trial by jury violative of the Sixth and Fourteenth Amendments to the Constitution of the United States?
2. Are the Fifth and Fourteenth Amendments to the Constitution of the United States violated by: (a) The appointment of an *Amicus Curiae* by the State trial judge, prior to the formal institution of contempt proceedings, to investigate and report facts surrounding an alleged contemnor's conduct without making such report part of the record of the contempt proceedings; (b) comment in a state criminal contempt proceeding of the failure of the alleged contemnor to testify in his own behalf.

STATEMENT.

The statement of the petitioner (Petition, pp. 5-7) fails to set forth, in a cogent or chronological manner, the fact pattern and procedure which ultimately resulted in the imposition of a twenty-four month sentence for contempt of court upon the petitioner, S. Edward Bloom. The complete facts, as evidenced by the voluminous transcript of proceedings filed in this Court, are as follows:

William A. Melody, a resident of Cook County, Illinois, died testate on the 6th day of July, 1964 (Abst. 2). His last Will and Testament, executed on October 4, 1962, and amended by codicil on August 9, 1963, was filed in the office of the clerk of the Circuit Court of Cook County, Probate Division, on July 7, 1964 (Abst. 87). These documents were prepared and executed by the law firm of Lelivelt, Swidler and Juron, and filed by the executor named in the instruments, the Northern Trust Company, together with a petition requesting that the last Will and Testament of

William A. Melody be admitted to probate (Abst. 4). The petition contained, among other statements, the last address of decedent, the approximate value of the estate and a list of all heirs and legatees of the decedent (Pet. Exhibit H; Rec. 1521).

On July 17, 1964, an instrument, purported to be the last Will and Testament of William A. Melody, and dated June 21, 1964, was presented at the offices of the named executor by Pauline Owens, a practical nurse who had attended the decedent for several years prior to his death (Record, p. 964; Addl. Abst. 12). On July 20, 1964, because of the discovery of this instrument two weeks subsequent to the decedent's death, a meeting was held at the Northern Trust Company attended by officers of the bank, Mr. Swidler, and the petitioner, S. Edward Bloom. At this meeting, the bank officers stated that it was their policy to retain the attorney who drew the Will and that if Mr. Bloom was going ahead with the filing and proof of the Will, it would be his job (Record, p. 970; Addl. Abst. 12). Petitioner then invited Swidler, who had represented testator during his lifetime and had prepared the instruments of October 4, 1962, and August 9, 1963, to assist him in the probating of the Will dated June 21, 1964 (Record, p. 970; Addl. Abst. 12). Swidler thereupon questioned petitioner as to his meeting with deceased, the circumstances surrounding his compilation of information and the contents of the Will. Petitioner informed Swidler that on June 12, 1964, he was called by Pauline Owens and that he went to the Melody apartment on that date to procure the necessary information. He also stated to Swidler that he met the decedent, carried on a conversation with him, that Mr. Melody spoke in a hoarse voice, mumbled, and that Mrs. Owens aided defendant by explaining what the deceased was trying to say. Petitioner further stated to Swidler that he prepared the Will, called for an appointment at

the Melody apartment, was told to mail the document instead, and did so (Record, pp. 972-973; Addl. Abst. 12, 13). Petitioner, upon request, presented a copy of the Will, which Will was signed by witnesses and dated June 21, 1964 (Record, p. 973; Addl. Abst. 13). The Will dated June 21, 1964 was, on July 20, 1964, filed in the office of the Clerk of the Circuit Court, Probate Division, by the petitioner (Abst. 18).

On August 5, 1964, a second meeting, called at the insistence of Edward Arkema, an attorney representing certain heirs of the Melody estate, was arranged at the office of the Northern Trust Company. Those present were Mr. Kaufman and Mr. McNeil, bank officers, Mr. Arkema, Mr. Swidler and petitioner, Bloom (Record, p. 1008; Addl. Abst. 15). Arkema inquired whether petitioner prepared or dictated the Will of June 21, 1964, how petitioner received his information, when he received the information and from whom he received it. Petitioner stated that he prepared the Will and that he received the information from talking with Mr. Melody (Record, p. 1009; Addl. Abst. 15). Arkema then confronted petitioner with a medical report by the physician of Mr. Melody which stated that on June 16, 1964, the decedent, in his opinion, could not communicate (Record, p. 1010; Addl. Abst. 15). Arkema then addressed petitioner casting doubt as to the validity of the Will of June 21, 1964, and suggested that it would be best for petitioner to sign an affidavit attached to the Will that such is a true copy of the Last Will and Testament of William A. Melody. He further requested that, if petitioner were to petition for the admission of the Will to probate, a similar affidavit should be attached (Record, p. 1011; Addl. Abst. 13). Petitioner refused to do so unless he obtained written authority from the bank, whereupon the bank officials refused to issue such letter (Record, p. 1012; Addl. Abst. 15).

On August 11, 1964, at 2:00 P. M., Judge Gumbel had set for hearing the petition of the Northern Trust Company asking the Court to admit to probate the instruments dated October 4, 1962 and August 9, 1963 (Record, p. 1521, Exhibit No. 3). Present were Louis Swidler and Marvin Juron, in their capacity as attorneys for the executor, and Edward Arkema, attorney for certain heirs of the decedent, William A. Melody. Whereupon, the petitioner, S. Edward Bloom, formally presented a petition before Judge Gumbel requesting that the instrument dated June 21, 1964, and purporting to be the Last Will and Testament of William A. Melody, be admitted to probate (Record, p. 1017; Addl. Abst. 16). The petition filed by petitioner and signed by an officer of the Northern Trust Company contained, among other matters, the following statement:

> "William A. Melody, whose place of residence at the time of his death was 2052 Lincoln Park West, Chicago, Cook County, Illinois, died July 6, 1964, leaving a Will dated June 21, 1964." (Abst. 2.)

At this juncture, it becomes necessary to return to those series of events surrounding the preparation of the Will which petitioner presented to the court on August 11, 1964. The circumstances with respect to the period prior to, during and immediately after the preparation of the Will dated June 21, 1964 can best be summarized as follows:

On July 8, 1964, two days after the death of William A. Melody, Pauline Owens, the practical nurse attending Mr. Melody, called at the office of attorney Bernard Koenig, who had previously represented Mrs. Owens in legal matters (Record, p. 1056; Addl. Abst. 16). Mrs. Owens told Koenig that Mr. Melody had died on July 6, 1964; that on the date of his death a firm of lawyers had prepared a petition to probate his Will, but that this Will did not reflect the true intentions of the deceased; that she wanted another Will prepared (Record, p. 1058; Addl. Abst. 17).

Mrs. Owens also told Koenig that she had a list of the persons who were to receive bequests. Such list was written on typewriter size paper which, according to Koenig, appeared to be in Mrs. Owens' handwriting (Record, p. 1060; Addl. Abst. 17). Koenig refused to draw up a Will but agreed to check the court file to determine if an estate had been opened (Record, p. 1061; Addl. Abst. 17).

On July 9, 1964, Mrs. Owens and Koenig again met. Koenig told her that an estate had been opened, that a Will had been filed, and that he wanted nothing further to do with the situation. Mrs. Owens' efforts to persuade Koenig to prepare a Will for the deceased continued to no avail (Record, p. 1063; Addl. Abst. 17).

On July 11, 1964, Mrs. Owens again called Koenig asking him to reconsider his denial to prepare a Will for William A. Melody. Koenig told her, and his testimony relates that he did so in order to discourage her from calling, to bring the sum of $1,500.00 to his office. Mrs. Owens telephoned Koenig on Sunday, July 12, 1964, stating that she had the amount he requested and would meet him at his office on Monday, July 13, 1964. Mrs. Owens appeared at Koenig's office on July 13, 1964, showed him the $1,500.00 in her purse and requested that a Will be drawn. Koenig refused and told Mrs. Owens to "get someone else." Mrs. Owens then left, without Koenig either accepting the money or drawing the spurious document which she requested (Record, pp. 1067-1070; Addl. Abst. 18).

On July 14, 1964, Sandra Kernene, a secretary-stenographer employed on a part time basis by petitioner, S. Edward Bloom, arrived at work at approximately 12:30 P. M. As she entered petitioner's private office pursuant to his request, she observed petitioner, a client, Pauline Owens, and another secretary, Susan Cohen (Record, p. 911; Addl. Abst. 7). Petitioner stated that he needed Mrs. Kernene immediately; that he was going to dictate a Will. The

petitioner told her that the name of the testator was William A. Melody (Record, pp. 911, 922; Addl. Abst. 8). Mrs. Kernene took the dictation in shorthand; while dictating, petitioner referred to some papers or notes (Record, p. 912; Addl. Abst. 8). Mrs. Kernene then typed the Will, stapled it together and gave it to petitioner. After some moments, petitioner told Mrs. Kernene that some changes were to be made, involving amounts of legacies. One change increased the bequest to Mrs. Owens from $20,000.00 to $40,000.00 (Record, p. 939; Addl. Abst. 9-10). Mrs. Kernene revised the Will and finished about 5:30 P. M. on July 14, 1964. It was read by petitioner, stapled together and handed to Mrs. Owens, who then left the office (Record, pp. 944-947; Addl. Abst. 10).

Mrs. Kernene was positive that the day she typed the Will was July 14, 1964, for on that date, her husband dropped off a check for $122.00 at her office, which check she deposited in her account (Record, p. 958; Addl. Abst. 11). Mrs. Kernene had not been at petitioner's office since July 2, 1964; July 14, 1964 was the last date that she worked for petitioner (Record, p. 951; Addl. Abst. 10).

The Will typed by Sandra Kernene on the afternoon of July 14, 1964 was the same Will presented for probate by the petitioner in open court on August 11, 1964 (Record, p. 957; Addl. Abst. 16). (See People's Exhibit 1.) Mrs. Kernene so identified the document (Record, p. 909; Addl. Abst. 11).

One of the signators to the document dated June 21, 1964, Velma Hoyle, testified that she and Betty Jean Tewell, the other witness, affixed their signature to the document between July 6 and July 18, 1964 at Miss Hoyle's home in Waukegan, Illinois; that it was not signed in the presence of Mr. Melody; that she affixed the date of the Will as June 21, 1964 at the direction of Alma Allen and Pauline

Owens; and that the Will was left and picked up by Alma Allen after she and Betty Jean Tewell signed it (Record, pp. 805-814). Previous to the testimony given by Velma Hoyle at the contempt hearing of defendant, both Hoyle and Tewell, on September 17, 1964, confessed to the court that they affixed their signatures to the Will after the death of William A. Melody (Abst. 42-43).

Having depicted, in proper perspective, the episode of July 6-17, 1964, involving the circumstances leading to the origination of the Will dated June 21, 1964, we now recount the events subsequent to August 11, 1964.

On August 18, 1964, petitioner Bloom presided over a meeting which he called at the Sherman House in Chicago, for the purpose of apprising the heirs and legatees of the Will dated June 21, 1964. At that time, petitioner urged those present to retain their own attorneys to represent them in connection with their interests under the Will. He further stated that since there might be action taken to contest the Will, they would be at liberty to retain counsel (Record, p. 988; Addl. Abst. 13).

On August 25, 1964, a petition was filed by Edward Walliser, an heir of the decedent, requesting the appointment of an *Amicus Curiae* to investigate fraud with respect to the estate of William A. Melody (Abst. 4). On the same date, the court ordered one Sam F. Fink to act as such *Amicus Curiae* with authority to investigate the circumstances of the preparation, execution, filing and presentation of the purported last Will of William A. Melody, dated June 21, 1964 (Abst. 17).

On September 10, 1964, a petition for a rule to show cause why Pauline Owens, Alma Allen, S. Edward Bloom, Velma Hoyle and Betty Jean Tewell should not be held in contempt of court was filed by the heirs of William A. Melody, together with the State's Attorney of Cook County

(Abst. 19). Such petition was filed with leave of court, the court further ordered the files impounded and issued body attachments for each of the individuals named in the petition (Abst. 39-40).

On September 11, 1964, an order was entered requiring service of the rule on the above named individuals and resetting the date of the hearing on the admission to probate of the Will filed by defendant from September 23, 1964 to September 17, 1964 (Abst. 41).

On September 17, 1964, after hearing testimony to the effect that the witnesses to the Will of June 21, 1964, affixed their signatures to the document after July 6, 1964, and that the date shown on the Will was inserted by a witness, Velma Hoyle, at the request of Alma Allen and Pauline Owens, the court declared such Will of June 21, 1964, to be a spurious document and denied its admission to probate (Abst. 42-43).

On September 21, 1964, with all parties present before the court on the return of the Writs of Attachment previously issued and all parties released on bond, an order was entered continuing the cause to October 27, 1964, requiring at that time, all respondents to answer the charge of contempt pending before the court (Abst. 43-44).

On October 21, 1964, the State's Attorney of Cook County filed a separate petition for a rule to show cause against petitioner, S. Edward Bloom, which petition was amended on November 18, 1964, alleging the circumstances hereinbefore described, with supporting affidavits (Abst. 45, 46, 47, 50, 51, 52, 53, 54, 56-63). On January 20, 1965, the motion of S. Edward Bloom to dismiss the amended petition of the State's Attorney of Cook County was denied, and a rule to show cause entered and returnable on February 1, 1965 (Abst. 70-71). Petitioner failed to answer the rule. A hearing commenced on February 2, 1965, and

culminated on February 24, 1965, with the entry of an order adjudging the petitioner in contempt of court and sentencing him to the County Jail for a period of twenty-four months (Abst. 76, 77, 78). The Supreme Court of Illinois affirmed, 35 Ill. 2d 255, 220 N. E. 2d 475.

ARGUMENT.

An examination of the petition filed in this cause in relation to the considerations governing review on *certiorari* (Rule 19, Rules of the Supreme Court of the United States) manifests no justiciable issues warranting review by this Court on *certiorari*. The right to trial by jury in a state criminal contempt case is neither a federal question of substance not heretofore determined by this court, nor a decision which fails to stand in accordance with applicable decisions of this court (*United States* v. *Barnett*, 376 U. S. 681 [1963]; also cases cited in footnote 12, pp. 694-695). Such question presented by petitioner raises no conflict between the decision of the Supreme Court of Illinois, this Court, or any other federal court (*Green* v. *United States*, 356 U. S. 165 [1958]). Since the issue presented is one that has been both previously and recently settled, and does not involve a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, the need for review of the decision of the highest State court of Illinois is found lacking (Cf. *United States* v. *Barnett*, 376 U. S. 681 [1963] footnote 12, p. 695, with *Cheff* v. *Schnackenberg*, 384 U. S. 373 [1966]).

The right *per se* to a jury trial in a criminal contempt case has been denied in *Barnett*, where the court stated:

> "Finally, it is urged that those charged with criminal contempt have a constitutional right to a jury trial. The claim has been made and rejected here again and again. Only six years ago we held a full review of the issue in *Green* v. *United States*, 356 U. S. 165 (1958). We held there that '[t]he statements of this court in a long and unbroken line of decisions involving con-

tempts ranging from misbehavior in court to disobedience of court orders established beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right.' At 183. Nor can it be said with accuracy that these cases were based upon historical error. It has always been the law of the land, both state and federal, that the courts—except where specifically precluded by statute—have the power to proceed summarily in contempt matters."

". . . we have at least 50 cases of this court that support summary disposition of contempts, without reference to any distinction based on the seriousness of the offense. We list these in the margin.[12] It does appear true that since 1957 the penalties imposed in cases reaching this court have increased appreciably. But those cases did not settle any questions as to the punishment imposed."

Petitioner contends, however, that important modifications in the area of trials of criminal contempts were set forth by this Court in *Cheff* v. *Schnackenberg*, 384 U. S. 373 (1966), and appear to conflict with *Barnett* (Petition, p. 8). Respondent does not agree. In *Cheff*, this court specifically held that a sentence of six months for criminal contempt imposed by a lower federal court without a jury was not subject to constitutional attack, and further stated that trial by jury was required unless waived for sentences of a greater duration. However, the latter directive was bottomed, not upon a constitutional right but, upon the regulatory power of this court over lower federal courts:

". . . we recognize that by limiting our opinion to those cases where a sentence not exceeding six months is imposed, we leave the federal courts at sea in instances involving greater sentences. Effective administration compels us to express a view on that point. Therefore, *in the exercise of the court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases*, we further rule that sentences exceeding six months for criminal contempt

> may not be imposed by federal courts unless a jury trial has been received and waived." (86 Sup. Ct. 1523, at 1526).

The power of a state court to punish for criminal contempt without a trial by jury is governed by the principles set down in *United States* v. *Barnett,* 376 U. S. 618 (1963). Nothing in the opinion of *Cheff* v. *Schnackenberg,* 384 U. S. 373 (1966) can be viewed either as a modification of *Barnett,* or as a constitutional limitation upon the powers of state courts in this area.

The remaining issues raised by petitioner fail to satisfy the prerequisite of substantial constitutional matter. First, the appointment of an *Amicus Curiae* by the state trial judge, prior to the formal institution of contempt proceedings, to investigate and report facts surrounding the petitioner's conduct has been recognized as proper (*People* v. *Goss,* 10 Ill. 2d (1957)). Such appointment was made only after a petition was filed in the Probate Division of the Circuit Court of Cook County by heirs of the decedent demanding that an investigation be made and alleging that fraud may have been committed with respect to the estate (Abst. 4). Since the investigation and report by the *Amicus Curiae* was accomplished prior to the institution of a rule to show cause against petitioner, there was no obligation to include it as part of the trial record, save to allow petitioner's counsel access to it during cross-examination of witnesses who both testified at the trial and made statements to the investigator. This, the trial judge allowed so that petitioner would be able to bring forth any prior inconsistent statements of witnesses who testified at the trial (Petition, p. 7, Abst. 89, 90). Further, petitioner sets forth no criteria indicative of prejudice to him by the exclusion of the pre-trial report from the record. Respondent, therefore, contends that no real constitutional question regarding this issue has been or can be presented from the record in this cause.

Secondly, the comment of the prosecutor as to petitioner's failure to testify is not, here, raised to the dignity of a constitutional question. Initially, petitioner failed to question the sufficiency of the evidence in his appeal to the Supreme Court of Illinois. Any error caused by such statement would be prejudicial only in the context of its assessment by the trier of fact to either buttress the evidence introduced by the state, or to destroy the effectiveness of any defense promulgated by the petitioner. Since the *quantum* of evidence supporting the verdict was not challenged in the state court, the error committed is harmless and non-prejudicial in the constitutional sense. Moreover, since the court was the trier of fact, since he was apprised of the fact that the petitioner did not testify, and since the contempt proceeding is not a criminal offense, but an action *sui generis,* the statement does not result in reversible error so long as the entire record substantiates the verdict. That it does so is evidenced by petitioner's constant failure to question the sufficiency of the evidence adduced at his trial.

CONCLUSION.

For the foregoing reasons, respondent respectfully prays that the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,

EDWARD J. HLADIS,
Chief of Civil Division,
500 Chicago Civic Center,
Chicago, Illinois 60602,
Counsel for Respondent.

GERALD J. MANNIX,
RONALD BUTLER,
Assistant State's Attorney,
Of Counsel.

SUPREME COURT, U. S.

AUG 30 1967

JOHN F. DAVIS, CLERK

No. 52

In the Supreme Court of the United States

OCTOBER TERM, 1967

S. EDWARD BLOOM,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Illinois

BRIEF FOR S. EDWARD BLOOM, PETITIONER

ANTHONY BRADLEY EBEN
One North La Salle Street
Chicago, Illinois 60602

HERBERT F. FRIEDMAN
188 W. Randolph Street
Chicago, Illinois 60602
Counsel for Petitioner

The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No.

S. EDWARD BLOOM,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Illinois

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BRIEF FOR S. EDWARD BLOOM, PETITIONER

OPINION BELOW

The Opinion of the Supreme Court of the State of Illinois (R. 113-118) is reported 35 Ill. 2d 255, 220 N.E. 2d 475.

JURISDICTION

The judgment of the Supreme Court of the State of Illinois was entered on September 23, 1966. (R. 118, 119) The time for filing a petition for a writ of certiorari was extended by Mr. Justice Clark of this Court on December 20, 1966 to February 18, 1967. The petition was filed on

February 16, 1967 and was granted on April 17, 1967. Jurisdiction in this Court is conferred by 28 U.S.C. §1257 (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitution of the United States:

Article III, §2. "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury . . .—"

Amendment V. "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury * * * nor shall any person be * * * deprived of life, liberty or property, without due process of law * * *"

Amendment VI. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, * * * and to be informed of the nature and cause of the accusation * * *."

Amendment XIV, §1. "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Constitution of the State of Illinois:

Article II, Section 5, "The right of trial by jury as heretofore enjoyed shall remain inviolate * * *."

Article II, Section 9, "In all criminal prosecutions, the accused shall have the right to * * * a speedy public trial by an impartial jury * * *."

Illinois Criminal Code of 1961. (S.H.A. Ch. 38):

Section 1-3 "No conduct constitutes an offense unless it is described as an offense in this Code or another statute of this State. However, this provision does not affect the power of the court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment or decree."

Section 1-7 (e). "All sentences to the penitentiary shall be for an indeterminate term. * * *"

Section 1-7 (f) "All sentences of imprisonment other than to a penitentiary shall be for a definite term which shall not exceed one year."

Section 1-7 (j). "The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided may sentence the offender to a term of imprisonment not to exceed a year or a fine not to exceed $1,000 or both."

Section 2-7. "'Felony' means an offense punishable with death or by imprisonment in the penitentiary."

Section 2-11. "'Misdemeanor' means any offense other than a felony, and includes conduct prohibited by a statute which provides no penalty for its violation."

Section 2-12. "'Offense' means a violation of any penal statute of this State."

Section 17-3. (a) "A person commits forgery when, with intent to defraud, he knowingly:

(1) Makes or alters any document apparently capable of defrauding another in such manner that it purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority; or

(2) Issues or delivers such document knowing it to have been thus made or altered; or

(3) Possesses, with intent to issue or deliver, any such document knowing it to have been thus made or altered.

(b) An intent to defraud means an intention to cause another to assume, create, transfer, alter or terminate any right, obligation, or power with reference to any person or property.

(c) A document apparently capable of defrauding another includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated.

(d) Penalty. A person convicted of forgery shall be fined not to exceed $1,000 or imprisoned in the penitentiary for one to 14 years or both."

Section 103-6. "Every person accused of an offense shall have the right to a trial by jury unless understandingly waived by defendant in open court."

Section 115-1. "All prosecutions except on a plea of guilty shall be tried by the court and a jury or the court when a jury is waived by the defendant in open court."

Statutes of the United States:

Title 18 U.S.C. § 1. "Notwithstanding any Act of Congress to the contrary:

1. Any offense punishable by death or imprisonment to a term exceeding one year is a felony.

2. Any other offense is a misdemeanor.

3. Any misdemeanor, the penalty for which does not exceed imprisonment for a period of 6 months or a fine of not more than $500 or both, is a petty offense."

Title 18 U.S.C. § 402. "Any person, corporation or association willfully disobeying any lawful writ, proc-

ess, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by fine or imprisonment, or both."

"* * * * * *"

"This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevaling usages at law."

Title 18 U.S.C. §. 3691. "Whenever a contempt charged shall consist in willful disobedience of any lawful writ, process, order, rule, decree, or command of any district court of the United States by doing or omitting any act or thing in violation thereof, and the act or thing done or omitted also constitutes a criminal offense under any Act of Congress, or under the laws of any state in which it was done or omitted, the accused, upon demand therefor, shall be entitled to a trial by a jury, which shall conform as near as may be to the practice in other criminal cases.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful

writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States."

QUESTIONS PRESENTED

1. Is a defendant in a State Court trial for criminal contempt entitled under the Fourteenth Amendment to the Constitution of the United States to a trial by jury particularly where the conduct alleged as contempt is not petty or trivial but is a felony under the law of the State?

2. Do not *Cheff* v. *Schnackenberg,* 384 U.S. 373 (1966) and the Fourteenth Amendment to the Constitution of the United States require jury trials in State Court criminal contempt proceedings where the sentence imposed amounts to two years?

3. Is a State Court in imposing a sentence for criminal contempt limited by the Fourteenth Amendment to the Constitution of the United States to such sentence as it could impose only for petty offenses under the law of the State?

4. Does not the Fourteenth Amendment to the Constitution of the United States prohibit a State Court trial judge presiding at a contempt trial from conducting a private investigation into an alleged contemner's conduct and receiving a secret report with respect thereto *in camera* prior to such trial?

5. Does not the comment of a State Court prosecutor on the failure of an accused to take the stand in his own behalf deprive the accused of his rights to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States?

STATEMENT[1]

1. This matter arose in the Probate Division of the Circuit Court of Cook County, Illinois, upon the amended petition of the State's Attorney of that County charging petitioner with conduct claimed to constitute a criminal contempt of that Court. (R. 44-46). The conduct relied upon as the basis for this charge was the alleged preparation of a spurious Will of one William A. Melody by petitioner and its subsequent presentation by him for admission to probate when he knew that such Will had been prepared and then falsely executed and witnessed after Melody's death. (R. 45, 46).

This same conduct, if true, was in violation of the provisions of Section 17-3 of the Illinois Criminal Code of 1961 and punishable by a sentence of 1 to 14 years and/or a fine not to exceed $1,000. S.H.A. Ch. 38 § 17-3. No proceeding, however, was instituted by indictment against petitioner under the Criminal Code. In such event, petitioner would have been entitled to a jury trial. Illinois Constitution, Art. II §§ 5, 9; S.H.A. Ch. 38; §§ 103-6, 115-1.

The issues posed by the amended petition could not be tried summarily, nor were they, since the resolutions of such issues depended upon proof by respondent of facts relating to the preparation, execution and witnessing of the Will outside the presence, constructive or otherwise, of the trial court and therefore beyond its personal knowledge and observation.

When the cause came on for full trial, petitioner timely moved for a jury trial which motion was denied. (R. 78).

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[1] This cause involves three separate claims by petitioner of denials of constitutional rights. In order to more clearly delineate these claims, the facts are set forth separately with respect to each in this Statement.

During the trial, petitioner offered testimonial evidence which was received and which raised a question of fact as to his malevolent intent, a necessary element of criminal contempt under Illinois law. (R. 97-112).[2] After hearing all the evidence at a trial lasting approximately ten days, the trial court found petitioner's conduct in the above respects to be in derogation of the Court's dignity and its orderly processes. (R. 70). It thereupon adjudged petitioner in criminal contempt and sentenced him to the Cook County jail for a period of 24 months. (R. 70).

2. Approximately three months prior to the filing of respondent's amended petition (R. 44), the trial court upon a petition of an heir claimed under a prior Melody Will (R. 5-16) appointed one Fink, as *amicus curiae* in this Estate (R. 17). Under the terms of this order of appointment, Fink was authorized and empowered to investigate all matters pertaining to the preparation, execution and filing of the Melody Will presented by petitioner and to prosecute any fraud which he discovered attending same and to make "full report to the Court from time to time." (R. 17, 18).

Approximately 60 days before the amended petition was filed by respondent against petitioner, the trial court entered its order on Fink to file instanter his report covering the investigation which he had conducted up to that date (R. 36). This report was filed with the trial court itself and remained continuously in its own possession despite petitioner's efforts to examine it prior to trial. (R. 64, 65, 80, 81). In this connection, the trial court entered an order granting petitioner full excess to the files and court records in the Estate which it had

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[2] *People* v. *Koniecki*, 28 Ill. App. 2d 488 (1961); *People* v. *Hille*, 192 Ill. App. 139 (1915).

theretofore impounded but did not disclose that it had withheld therefrom the Fink report. (R. 68, 69).

At the trial, petitioner was permitted limited examination of this report and only insofar as it bore upon the testimony of those witnesses testifying for respondent and as an aid to the cross-examination of such witness. (R. 80, 81). Fink was not called as a witness by the respondent. After judgment, the trial court denied petitioner's motion to turn the Fink report over to the Clerk of the Court in order for it to be made part of the record on petitioner's appeal to the Illinois Supreme Court. (R. 75-77).

3. After presentation of all the evidence, the States Attorney in his summation commented on the failure of petitioner to testify in his own behalf. (R. 112). On objection by petitioner, the trial court ruled such comments to be proper argument. (R. 112).

ARGUMENT

I.

THE DENIAL OF A JURY TRIAL TO PETITIONER ON A CHARGE OF CRIMINAL CONTEMPT AMOUNTING TO A FELONY AND FOR WHICH HE WAS SENTENCED TO 2 YEARS IN JAIL CONTRAVENED HIS RIGHTS UNDER ARTICLE III § 2 OF THE CONSTITUTION OF THE UNITED STATES AND THE FIFTH AND SIXTH AMENDMENTS THERETO AS APPLIED TO THE STATES BY THE FOURTEENTH AMENDMENT.

In *Cheff* v. *Schnackenberg,* 384 U.S. 373 (1966) six members of this Court rejected a constitutional claim of right to trial by jury arising in a federal criminal contempt case in which a sentence of 6 months was imposed for disobedience of a court order. *Cheff,* pp. 375-386. Unlike the case at bar, the conduct there charged did not amount to a felony. Two members of the Court dissented on the grounds that a jury trial was constitutionally required.[3] *Cheff,* pp. 384-393. At the same time, by combination of the views of four members of the majority with those dissenting, it was held that sentences exceeding 6 months for criminal contempts may not be imposed by federal courts absent a jury trial or waiver thereof. *Cheff,* pp. 380, 384-393. As a result of this combination, it appears that this Court has taken a long stride forward in the direction of what has been described by Mr. Justice Black in his dissent in *United States* v. *Barnett,* 376 U.S. 681, 727 (1964) as:

> "* * * ultimate judicial obedience to the doubly proclaimed constitutional demand that all people charged with crime, including those charged with criminal contempt, must be given a trial with all the safeguards

[3] Mr. Justice White did not sit in *Cheff.*

of the Bill of Rights, including indictment by Grand Jury and trial by jury."

In reaching these holdings and dissents therefrom, the following diverse views of various members of this Court appear as follows:

1. Four Justices, (The Chief Justice and Mr. Justices Clark, Brennen and Fortas), pointed out that jury trials are not constitutionally required in prosecutions of federal petty offenses which are defined by 18 U.S.C. 1 as being any misdemeanor, the penalty for which does not exceed 6 months. Cheff pp. 379, 380. In their view, proceedings in criminal contempts are the equivalent of such prosecutions and therefore no different treatment of them is warranted or should be accorded. Because of this, they concluded that no right to trial by jury was guaranteed by the Constitution in criminal contempts where the sentences imposed did not exceed 6 months. On the other hand, these Justices, in accordance with the sense of the *dictum* set forth in *United States* v. *Barnett*, 376 U.S. 681, 695 (1960), ft. note 12, held that a jury trial is required in criminal contempts before sentences in excess of 6 months may be imposed. Necessarily, this view was based on constitutional grounds because the *Barnett dictum* was so grounded and because denial of a jury trial in cases resulting in sentences of more than 6 months could not be constitutionally justified by the device of equating criminal contempts to petty offenses.[4]

2. Two Justices, (Mr. Justice Douglas and Black), adhered to their prior views as set forth in the dissents in

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[4] Mr. Justice Douglas apparently agrees with petitioner's views in this respect since in his dissent he states that the prevailing opinion "studiously avoids embracing the view expressed by Mr. Justice Harlan (ante, at 381), that in no event does the Constitution require a jury trial for contempt." *Cheff*, p. 387.

Green v. *United States*, 356 U.S. 165, 193 (1958) and *United States* v. *Barnett*, 376 U.S. 681, 724, 728 (1964) that a criminal contempt is a "crime" within the meaning of Article III, § 2 of the Constitution and a "criminal prosecution" within the meaning of the Sixth Amendment both of which guarantee the right to trial by jury in such cases. *Cheff* 384.[5] In this connection, these Justices would not concede the validity of limiting the right to only serious, and not petty, contempts. As to this, Mr. Justice Douglas stated, *Cheff* p. 391:

> "So long as all contempts are lumped together, the serious nature of some contempts and the severity of the sentences commonly imposed in such cases control the legal character of *all* contempts. None can be regard as petty." (Emphasis supplied.)

Accordingly the minority held that unless and until Congress carved out classes of petty contempts a jury trial is required in all criminal contempt cases. *Cheff* p. 391, 392. In addition, these Justices felt that even if such a distinction could be drawn on the basis of seriousness or pettiness, it could be ascertained only by inquiry into the nature of the offense and the potential penalty rather than by reference to the amount of punishment actually imposed which they regarded as irrelevant. *Cheff* p. 386-393.

3. Two Justices, (Mr. Justices Harlan and Stewart), relying on *Green* and a number of decisions dating back

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[5] These dissents were based on exhaustive considerations of the Magna Carta, the Constitution of the United States and the Bill of Rights, the Declaration of Independence, the Constitution and Laws of the Original 13 States, early English and Colonial common law decisions and Blackstone's Commentaries. Those considerations resulted in the conclusion that there is "no justification, either in the history or policy of criminal contempt or in the history and policy of the Constitution for treating criminal contempt differently from other 'crimes' or 'criminal prosecution'." *Barnett*, p. 756.

to 1888, held that a prosecution for criminal contempt was not subject to trial by jury under any circumstances under Article III, § 2 of the Constitution and the Fifth and Sixth Amendments. *Cheff* p. 381-383.

It is evident from the various opinions in *Cheff*, as shown above, that their now exists on this Court a majority which on constitutional grounds alone would require a jury trial in a federal contempt matter similar to the case at bar.[6] Thus, Mr. Justices Douglas and Black would so hold simply because the charge was one of criminal contempt whereas the Chief Justice and Mr. Justices Clark, Brennen and Fortas would require such a jury trial because the offense here charged was not equivalent to a petty offense since it was punished by a 2 year sentence.

Upon his appeal to the Supreme Court of Illinois, petitioner relied heavily on *Cheff* in support of his contention that the denial of his demand for a jury trial in a serious contempt matter on a charge amounting to a felony and his subsequent sentence herein of 2 years contravened his constitutional rights under Article III § 2 of the Constitution and the Fifth and Sixth Amendments as applied to the States by the Fourteenth Amendment.[7] He also asserted in that Court and reasserts here that the reasoning of *Cheff*, as above shown, presently requires trial by jury in

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[6] Actually, the question here presented relating to trial by jury could not arise federally under the circumstances here in view of 18 U.S.C. §§ 402 and 3691 providing for trial by jury where the contempt charged is of such a character as to constitute a criminal offense under any statute of the United States or under the laws of any State in which the act was committed. See *Michaelson* v. *United States Ex Rel Chicago, Illinois, St. Paul, Minneapolis and Omaha Railway Company*, 266 U.S. 42 (1942).

[7] Similar constitutional assertions were also made under Article II, §§ 5 and 9 of the Constitution of the State of Illinois.

all Illinois criminal contempt cases regardless of the length of sentence imposed. This follows from the fact that in Illinois there are only two classes of offenses, *i.e.*, felonies and misdemeanors. S.H.A. Ch. 38 §§ 2-7, 2-11, 2-12. The right to trial by jury in both of these classes is unconditionally guaranteed by Article II §§ 5 and 9 of the Constitution of the State of Illinois as well as by statute. S.H.A. Ch. 38 §§ 103-6, 115-1. However, there is no statutory provision in Illinois comparable to 18 U.S.C. 1 and no body of decisions permitting the trial of petty offenses without a jury. For these reasons, the equation by which the Chief Justice, and Mr. Justices Clark, Brennen and Fortas justified the denial of a jury trial in *Cheff* is not here available and the distinction between their views and those of Mr. Justices Douglas and Black in the premises evaporates.

The Supreme Court of Illinois found no merit in any of petitioner's arguments and affirmed his conviction. In so doing, it flatly rejected this Court's reasoning in *Cheff*, stating in this connection, (R. 114, 115):

> "A test which would make the right to a jury trial depend upon whether the contemnor's conduct was serious or pretty—or a rule which would limit the penalty which could be imposed, simply because a jury trial was not had or waived—would lead to nothing but incongruity and confusion, and would have no relation whatever either to the nature of the proceeding or to the purpose of trial by jury."

The Supreme Court of Illinois has thus refused to follow *Cheff* and refuses to recognize the important modifications it has imposed on *United States* v. *Barnett*, 376 U.S. 681 (1964) and *Green* v. *United States*, 356 U.S. 165 (1958). Instead, it chose to rely on both of those outmoded cases as the last of a long line of decisions establishing that "criminal contempts are not subject to jury

trial as a matter of constitutional right" and that "the exercise of summary contempt power is not restricted to offenses that may be classified as 'trivial' or 'petty' * * *". (R. 115, 116).

Petitioner urged in the Court below and does so here again that reliance on these cases under the circumstances of the instant case is misplaced because virtually all such cases dealt with contempts arising either because of willful violations of a duty created or declared by a court order or because of contumacious acts amounting to misconduct committed in the presence of the court which impeded its dignity and amounted to direct contempts because of the personal knowledge of the court of the facts thus requiring neither notice nor evidence. *Ex Parte Terry*, 128 U.S. 288, 299, 300 (1888); *Ex Parte Grossman*, 267 U.S. 87 (1925); *Gompers* v. *Bucks Stove and Range Co.*, 221 U.S. 418 (1911).[8]

It is, of course, quite true that inherent power to punish for contempt exists in courts in order to protect them from insults and oppression while in the ordinary exercise of their duties, and to enable them to enforce their judgments and orders necessary to the due administration of law. *Bessette* v. *W. B. Conkey Co.*, 194 U.S. 333 (1904). In other words, the power exists, to the extent it exists, only as an *essential incident* to the maintenance by courts of their authority and in the administration and execution of their judicial powers. *Ex Parte Terry*, 189 U.S. 302, 303, (1888). It is urged that this inherent power should exist and be exercised only where it

[8] All of the cases referred to by Mr. Justice Harlan in his opinion in *Cheff* as authority for the proposition that criminal contempts are not triable by jury under the Constitution fall within this classification. Not one dealt with conduct amounting to the commission of a crime committed outside the presence of the Court and thus requiring proof of independent facts.

is essential, otherwise, the reason for its existence falls. In this respect, courts' authority over contempts is said to be limited "to the least possible power adequate to the end proposed". *Anderson* v. *Dumne,* 6 Wheat (U.S.) 204, 231 (1821); *In re Michael,* 326 U.S. 224, 227 (1945); *In re Oliver,* 333 U.S. 257, 274 (1948). This Court in *Re Oliver,* p. 274, thought that the exercise of the contempt power should not be expanded beyond "the suppression and punishment of the court-disrupting misconduct which alone justified its exercise."

In the case at bar, the exercise of the power is not essential because the contempt involved constitutes a serious crime and the court's functions are afforded adequate protection by the institution of proper criminal proceedings.[9]

Further, the reasonableness and justice of requiring criminal contempts of the sort charged in the instant case to be tried only as crimes under all the constitutional safeguards of the Bill of Rights is best demonstrated from the fact that even in those cases where courts exercise their inherent powers to enforce their decrees and processes, and to protect their dignity, many protections and immunities are already afforded the accused. Thus, it is held under federal and Illinois decisions that he is entitled

[9] Query whether it is not time for this Court to assert that prosecutions for criminal contempts which also constitute criminal offenses are never proper, particularly when not committed in the presence of the Court? At present, the contemnor may be prosecuted and punished twice for the same conduct since it is held federally that the double jeopardy provisions of the Fifth Amendment have no application to prosecutions for criminal contempts. *O'Malley* v. *United States,* 128 F. 2d 676, 684 (C.A. 8, 1942), reversed on other grounds, *Pendergast* v. *United States,* 317 U.S. 412 (1943). The law in Illinois appears to be similar although there are no cases directly in point. *People* v. *Flaherty,* 396 Ill. 304 (1947).

to the presumption of innocence, proof beyond reasonable doubt, need not testify against himself, advice as to the charges against him, a reasonable opportunity to prepare a defense, assistance of counsel, an impartial arbiter of the facts, benefit of statutes of limitations governing crimes, and the right to a pardon. *Gompers* v. *Bucks Stove and Range Co.,* 221 U.S. 412, 443, 446, 448 (1911); *Gompers* v. *United States,* 223 U.S. 604, 601 (1914); *Ex Parte Grossman,* 267 U.S. 87, 115, 118 (1925); *In re Murchison,* 349 U.S. 133 (1955); *Cook* v. *United States,* 267 U.S. 517 (1925); *People* v. *Skar,* 30 Ill. 2d 491 (1964); *People* v. *Spain,* 307 Ill. 382 (1923).

As heretofore noted, the Supreme Court of Illinois determined petitioner's claim of deprivation of his constitutional right to a jury trial by reliance on decisions of this Court. Thus, tacitly, at least, it recognizes the applicability of pertinent provisions of the United States Constitution to the questions here involved under the Fourteenth Amendment. In any event, petitioner submits that the Fourteenth Amendment provides him with protection here, particularly insofar as the Sixth Amendment is concerned. *Pointer* v. *Texas,* 380 U.S. 400, 403, 406 (1965). In this connection it is pointed out that this Court in recent years has more and more construed the Fourteenth Amendment as incorporating the Bill of Rights. *Griffin* v. *California,* 380 U.S. 609 (1965); *Estes* v. *Texas,* 381 U.S. 532 (1965); *Gideon* v. *Wainwright,* 372 U.S. 335 (1963). This principle was first annunciated by Mr. Justice Black in his dissent in *Adamson* v. *California,* 332 U.S. 46, 68 (1947). In 1965, *Adamson* was expressly overruled by *Griffin* indicating the minority view is tending to become that of the majority. In the October, 1966 term of this Court, provisions of the Bill of Rights were applied to the States in at least nine decisions. *Long* v. *Iowa,* 17 L. Ed. 2d 290; *Sims* v. *Georgia,* 17 L. Ed. 2d 593;

Whitus v. *Georgia,* 17 L. Ed. 2d 599; *Miller* v. *Pate,* 17 L. Ed. 2d 690; *Spect* v. *Patterson,* 18 L. Ed. 2d 326; *Clewis* v. *Texas,* 18 L. Ed. 2d 423; *Anders* v. *California,* 18 L. Ed. 2d 493; *Re Gault,* 18 L. Ed. 2d 527; *Berger* v. *New York,* 18 L. Ed. 2d 1040; *Washington* v. *Texas,* 18 L. Ed. 2d 1019.

The right to jury trials and the safeguards which they long afforded have been extensively discussed in the dissents in *Barnett,* pp. 725, 726, 759; 760; and *Green,* pp. 199, 201, 209, 210. Regard for constitutional liberty requires that these safeguards be imposed on the States under the Fourteenth Amendment.

II.

THE PRETRIAL INVESTIGATION OF PETITIONER BY THE TRIAL COURT DEPRIVED PETITIONER OF HIS CONSTITUTIONAL GUARANTY OF DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

Petitioner's claims that the action of the trial judge in investigating petitioner's conduct and in receiving a secret report relative thereto *in camera,* all prior to the institution of any proceeding against petitioner, deprived petitioner of his constitutional rights under the Fifth and Fourteenth Amendments to the Constitution of the United States. In support of this contention petitioner relies on *In re Murchison,* 349 U.S. 133, (1955), and *Re Oliver,* 333 U.S. 257 (1945), cases not squarely in point on the facts but pertinent and controlling, it is urged, on the principles announced. In *Murichison,* this Court held it to be a violation of the Due Process Clause for a state court to try in contempt proceedings a witness it had called before it when it was acting as an investigative one-man grand jury. In so determining the Court stated, p. 136:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter of due process of law.' *Tumey* v. *Ohio,* 273 U.S. 510, 532, 71 L. ed. 749, 758, 47 S. Ct. 437, 50 A.L.R. 1243. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weight the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt* v. *United States,* 348 U.S. 11, 99 L. ed., 75 S. Ct. 11."

and at p. 138, this Court stated:

> "As a practical matter it is difficult if not impossible for a judge to free himself from the influence of what took place in his 'grand jury' secret session. His recollection of that is likely to weigh far more heavily with him than any testimony given in the open hearings."

The Supreme Court of Michigan was thereupon reversed.

All of the above poses the due process question of whether a court which has itself, through its own arm, investigated a criminal contempt prior to trial can be expected to erase inferences and conclusions arising from matters learned during the investigation. Will it be able to make any nice distinction between preponderance of

evidence and proof beyond reasonable doubt as required in criminal contempt trials? If the evidence on the criminal contempt charge is different from that which it learned of through its investigation, will it be able to expunge from mind or memory that which it learned of prior to trial? And how could anyone know, particularly since the trial court refused to release the entire Fink report so that it could be made part of the Record on Appeal?

The Supreme Court of Illinois was not responsive to these contentions. In this connection, it stated, (R. 116, 117).

> "The Record does not show, nor does the defendant indicate, how the report and its presentation to the judge worked any prejudice or harmed him in any way. The appointment of an *amicus curiae* to make an investigation as heretofore been recognized as proper, (*People* v. *Goss,* 10 Ill. 2d 533) and the evidence, all of which was heard in open court, not only is able to sustain the finding but is largely undisputed by defendant."

This statement of the Supreme Court of Illinois appears to be wrong for three separate reasons. Firstly, as pointed out above, the trial court's actions in refusing to make the report part of the Record effectively prevented petitioner from making a showing that the balance of the report, which was not made available to him, did prejudice him. Secondly, petitioner never contended that the appointment of *amicus curiae* was not proper. His argument ran to the use by the trial court of the report after it had been prepared. Thirdly, petitioner did not dispute the finding in the Supreme Court of Illinois, only because, as he there stated, on appeal the evidence had to be viewed in the light most favorable to respondent. Petitioner has

also contended that the psychiatric evidence given in his behalf raised a serious fact question as to his guilt.

III.

THE PROSECUTOR'S COMMENT ON THE FAILURE OF PETITIONER TO TESTIFY IN HIS TRIAL ON JURY CONTEMPT WAS PREJUDICIAL ERROR AND VIOLATED PETITIONER'S RIGHT TO DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

Petitioner maintains that the comment of the prosecutor as to his failure to testify, even though made in a non-jury case, violated petitioner's constitutional rights under the Fourteenth Amendment. In support of this contention, petitioner relies on *Griffin* v. *California,* 380 U.S. 609 (1965), flatly holding that the self-incrimination guaranty of the Fifth Amendment in its bearing on the states by reason of the Fourteenth Amendment, forbids comment by the prosecution as to accused's silence. In so doing, it relied on the following reasoning in *Wilson* v. *United States,* 149 U.S. 60 (1893), which has particular cogency here in view of petitioner's psychiatric testimony. In *Wilson,* this Court stated at p. 66:

> "* * * The act was framed with a due regard also to those who might prefer to rely upon the presumption of innocence which the law gives to every one, and not wish to be witnesses. It is not every one who can safely venture on the witness stand though entirely innocent of the charge against him. Excessive timidity, nervousness when facing others and attempting to explain transactions of a suspicious character, and offenses charged against him will often confuse and embarrass him to such a degree as to increase rather than remove prejudices against him. It is not every one, however honest, who would, therefore, willingly

be placed on the witness stand. The statute, in tenderness to the weakness of those, who from the causes mentioned might refuse to ask to be a witness, particularly when they may have been in some degree compromised by their association with others, declares that the failure of the defendant in a criminal action to request to be a witness shall not create any presumption against him."

Petitioner, of course, is aware of this Court's modification of *Griffin* in *Chapman* v. *California,* 17 L. ed. 2d. 705 (1967). He urges, however, that the error here complained of cannot be held to be "harmless beyond reasonable doubt", *Chapman,* 17 L. ed. 2d. at p. 711, since the trial judge considered the prosecutor's comment to be proper argument which the court thought merited reply by the petitioner. (R. 112, 113) Obviously, the trial court must have accorded weight to the inferences flowing from the prosecutor's improper comment which, of course, offends the *Griffin* decision.

CONCLUSION

It is apparent that this Court now views a jury trial as being constitutionally required in all federal cases of criminal contempt amounting to serious offenses. Here, the criminal contempt with which petitioner was charged was a felony under the Illinois Criminal Code of 1961. Because of the traditional and revered safeguards inherent in jury trials, particularly where crimes are tried as contempts, the rule now prevailing in this Court should be applied to the States under the Fourteenth Amendment. Solely because petitioner was denied a trial by jury, the case at bar should be reversed and remanded for a new trial in which petitioner would be accorded the full protection of the Constitution of the United States.

Moreover, petitioner points out that he was also denied other rights under the Constitution. Each of these denials of themselves should require reversal and remandment. In the aggregate, they evidence the complete disregard in the trial court of petitioner's constitutional rights and the unfairness of his trial there.

Respectfully submitted,

ANTHONY BRADLEY EBEN
HERBERT F. FRIEDMAN
Counsel for R. Edward Bloom, Petitioner

SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 52

S. EDWARD BLOOM,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR RESPONDENT, STATE OF ILLINOIS.

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,

EDWARD J. HLADIS,
Chief of Civil Division,
500 Chicago Civic Center,
Chicago, Illinois 60602,
Counsel for Respondent.

RONALD BUTLER,
Assistant State's Attorney,
Of Counsel.

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OPINION BELOW.

The Opinion of the Supreme Court of Illinois (R. 113-118) is Reported at 35 Ill. 2d 255, 220 N. E. 2d 475.

QUESTIONS PRESENTED.

I. Does the Sixth Amendment to the United States Constitution Grant a Right to Trial by Jury in a Criminal Contempt Case, Which Can Be Made Applicable to the Several States through the Fourteenth Amendment?

II. Were the Fifth and Fourteenth Amendments to the Constitution of the United States Violated by the Failure of the Trial Judge to Allow an Amicus Curiae's Report To Be Made Part of the Record, When Defendant's Counsel Was Allowed Access to Such Report During the Cross-Examination of Witnesses Who Testified at the Trial and Made Statements to the Amicus Curiae?

III. Does the Comment by the Prosecutor, in a Non-Jury Case, of the Failure of the Alleged Contemnor to Testify in His Own Behalf, Fall Within the "Harmless Constitutional Error" Doctrine of *Fahy* v. *Connecticut*, 375 U. S. 85, Which Doctrine Was Reaffirmed in *Chapman* v. *California*, 386 U. S. 18?

STATEMENT.

The statement of the petitioner (Petitioner's Brief pp. 7-9) fails to set forth, in a cogent or chronological manner, the fact pattern and procedure which ultimately resulted in the imposition of a twenty-four month sentence for contempt of court upon the petitioner, S. Edward Bloom. The complete facts, as evidenced by the voluminous transcript of proceedings filed in this Court, are as follows:

William A. Melody, a resident of Cook County, Illinois, died testate on the 6th day of July, 1964 (R. 3, 91). His last Will and Testament, executed on October 4, 1962, and amended by codicil on August 9, 1963, was filed in the office of the clerk of the Circuit Court of Cook County, Probate Division, on July 7, 1964 (R. 79). These documents were prepared and executed by the law firm of Lelivelt, Swidler and Juron, and filed by the executor named in the instruments, the Northern Trust Company, together with a petition requesting that the last Will and Testament of William A. Melody be admitted to probate (R. 79, 90,

91). The petition contained, among other statements, the last address of decedent, the approximate value of the estate and a list of all heirs and legatees of the decedent.

On July 17, 1964, an instrument, purported to be the last Will and Testament of William A. Melody, and dated June 21, 1964, was presented at the offices of the named executor by Pauline Owens, a practical nurse who had attended the decedent for several years prior to his death (R. 81, 83, 91). On July 20, 1964, because of the discovery of this instrument two weeks subsequent to the decedent's death, a meeting was held at the Northern Trust Company attended by officers of the bank, Mr. Swidler, and the petitioner, S. Edward Bloom (R. 91). At this meeting, the bank officers stated that it was their policy to retain the attorney who drew the Will and that if Mr. Bloom was going ahead with the filing and proof of the Will, it would be his job (R. 91). Petitioner then invited Swidler, who had represented testator during his lifetime and had prepared the instruments of October 4, 1962, and August 9, 1963, to assist him in the probating of the Will dated June 21, 1964 (R. 91). Swidler thereupon questioned petitioner as to his meeting with deceased, the circumstances surrounding his compilation of information and the contents of the Will. Petitioner informed Swidler that on June 12, 1964, he was called by Pauline Owens and that he went to the Melody apartment on that date to procure the necessary information. He also stated to Swidler that he met the decedent, carried on a conversation with him, that Mr. Melody spoke in a hoarse voice, mumbled, and that Mrs. Owens aided defendant by explaining what the deceased was trying to say. Petitioner further stated to Swidler that he prepared the Will, called for an appointment at the Melody apartment, was told to mail the document instead, and did so (R. 91, 92). Petitioner, upon request, presented a copy of the Will, which Will was signed by

witnesses and dated June 21, 1964 (R. 92). The Will dated June 21, 1964 was, on July 20, 1964, filed in the office of the Clerk of the Circuit Court, Probate Division, by the petitioner (R. 78).

On August 5, 1964, a second meeting, called at the insistence of Edward Arkema, an attorney representing certain heirs of the Melody estate, was arranged at the office of the Northern Trust Company. Those present were Mr. Kaufman and Mr. McNeil, bank officers, Mr. Arkema, Mr. Swidler and petitioner, Bloom (R. 93). Arkema inquired whether petitioner prepared or dictated the Will of June 21, 1964, how petitioner received his information, when he received the information and from whom he received it (R. 93). Petitioner stated that he prepared the Will and that he received the information from talking with Mr. Melody (R. 94). Arkema then confronted petitioner with a medical report by the physician of Mr. Melody which stated that on June 16, 1964, the decedent, in his opinion, could not communicate (R. 94). Arkema then addressed petitioner casting doubt as to the validity of the Will of June 21, 1964, and suggested that it would be best for petitioner to sign an affidavit attached to the Will that such is a true copy of the Last Will and Testament of William A. Melody. He further requested that, if petitioner were to petition for the admission of the Will to probate, a similar affidavit should be attached. Petitioner refused to do so unless he obtained written authority from the bank, whereupon the bank officials refused to issue such letter (R. 94).

On August 11, 1964, at 2:00 P.M., Judge Gumbel had set for hearing the petition of the Northern Trust Company asking the Court to admit to probate the instruments dated October 4, 1962 and August 9, 1963 (R. 93, 94). Present were Louis Swidler and Marvin Juron, in their capacity as attorneys for the executor, and Edward Arkema, attor-

ney for certain heirs of the decedent, William A. Melody. Whereupon, the petitioner, S. Edward Bloom, formally presented a petition before Judge Gumbel requesting that the instrument dated June 21, 1964, and purporting to be the Last Will and Testament of William A. Melody, be admitted to probate (R. 93, 94). The petition filed by petitioner and signed by an officer of the Northern Trust Company contained, among other matters, the following statement:

> "William A. Melody, whose place of residence at the time of his death was 2052 Lincoln Park West, Chicago, Cook County, Illinois, died July 6, 1964, leaving a Will dated June 21, 1964." (R. 3.)

At this juncture, it becomes necessary to return to those series of events surrounding the preparation of the Will which petitioner presented to the court on August 11, 1964. The circumstances with respect to the period prior to, during and immediately after the preparation of the Will dated June 21, 1964 can best be summarized as follows:

On July 8, 1964, two days after the death of William A. Melody, Pauline Owens, the practical nurse attending Mr. Melody, called at the office of attorney Bernard Koenig, who had previously represented Mrs. Owens in legal matters (R. 95). Mrs. Owens told Koenig that Mr. Melody had died on July 6, 1964; that on the date of his death a firm of lawyers had prepared a petition to probate his Will, but that this Will did not reflect the true intentions of the deceased; that she wanted another Will prepared (R. 95). Mrs. Owens also told Koenig that she had a list of the persons who were to receive bequests. Such list was written on typewriter size paper which, according to Koenig, appeared to be in Mrs. Owens' handwriting (R. 95). Koenig refused to draw up a Will but agreed to check the court file to determine if an estate had been opened (R. 95).

On July 9, 1964, Mrs. Owens and Koenig again met. Koenig told her that an estate had been opened, that a Will had been filed, and that he wanted nothing further to do with the situation. Mrs. Owens' efforts to persuade Koenig to prepare a Will for the deceased continued to no avail (R. 95).

On July 11, 1964, Mrs. Owens again called Koenig asking him to reconsider his denial to prepare a Will for William A. Melody. Koenig told her, and his testimony relates that he did so in order to discourage her from calling, to bring the sum of $1,500.00 to his office. Mrs. Owens telephoned Koenig on Sunday, July 12, 1964, stating that she had the amount he requested and would meet him at his office on Monday, July 13, 1964. Mrs. Owens appeared at Koenig's office on July 13, 1964, showed him the $1,500.00 in her purse and requested that a Will be drawn. Koenig refused and told Mrs. Owens to "get someone else." Mrs. Owens then left, without Koenig either accepting the money or drawing the spurious document which she requested (R. 96).

On July 14, 1964, Sandra Kernene, a secretary-stenographer employed on a part time basis by petitioner, S. Edward Bloom, arrived at work at approximately 12:30 P. M. As she entered petitioner's private office pursuant to his request, she observed petitioner, a client, Pauline Owens, and another secretary, Susan Cohen (R. 87). Petitioner stated that he needed Mrs. Kernene immediately; that he was going to dictate a Will (R. 87). The petitioner told her that the name of the testator was William A. Melody (R. 88). Mr. Bloom then dictated the instrument identified as Plaintiff's Exhibit 1 (R. 87). Mrs. Kernene took the dictation in shorthand; while dictating, petitioner referred to some papers or notes (R. 87). Mrs. Kernene then typed the Will, stapled it together and gave it to petitioner. After some moments, petitioner told Mrs.

Kernene that some changes were to be made, involving amounts of legacies. One change increased the bequest to Mrs. Owens from $20,000.00 to $40,000.00 (R. 89). Mrs. Kernene revised the Will and finished about 5:30 P. M. on July 14, 1964. It was read by petitioner, stapled together and handed to Mrs. Owens, who then left the office (R. 89).

Mrs. Kernene was positive that the day she typed the Will was July 14, 1964, for on that date, her husband dropped off a check for $122.00 at her office, which check she deposited in her account (R. 90). Mrs. Kernene had not been at petitioner's office since July 2, 1964; July 14, 1964, was the last date that she worked for petitioner (R. 90).

The Will typed by Sandra Kernene on the afternoon of July 14, 1964 was the same Will presented for probate by the petitioner in open court on August 11, 1964 (R. 87, 93). (See People's Exhibit 1.) Mrs. Kernene so identified the document (R. 87).

One of the signators to the document dated June 21, 1964, Velma Hoyle, testified that she and Betty Jean Tewell, the other witness, affixed their signature to the document between July 6 and July 18, 1964 at Miss Hoyle's home in Waukegan, Illinois; that it was not signed in the presence of Mr. Melody; that she affixed the date of the Will as June 21, 1964 at the direction of Alma Allen and Pauline Owens; and that the Will was left and picked up by Alma Allen after she and Betty Jean Tewell signed it (R. 37, 39). Previous to the testimony given by Velma Hoylé at the contempt hearing of defendant, both Hoyle and Tewell, on September 17, 1964, confessed to the court that they affixed their signatures to the Will after the death of William A. Melody (R. 37, 39).

Having depicted, in proper perspective, the episode of July 6-17, 1964, involving the circumstances leading to the

origination of the Will dated June 21, 1964, the events subsequent to August 11, 1964, are now recounted.

On August 18, 1964, petitioner Bloom presided over a meeting which he called at the Sherman House in Chicago, for the purpose of apprising the heirs and legatees of the Will dated June 21, 1964. At that time, petitioner urged those present to retain their own attorneys to represent them in connection with their interests under the Will. He further stated that since there might be action taken to contest the Will, they would be at liberty to retain counsel (R. 92).

On August 25, 1964, a petition was filed by Edward Walliser, an heir of the decedent, requesting the appointment of an *Amicus Curiae* to investigate fraud with respect to the estate of William A. Melody (R. 18). On the same date, the court ordered one Sam F. Fink to act as such *Amicus Curiae* with authority to investigate the circumstances of the preparation, execution, filing and presentation of the purported last Will of William A. Melody, dated June 21, 1964 (R. 36).

On September 10, 1964, a petition for a rule to show cause why Pauline Owens, Alma Allen, S. Edward Bloom, Velma Hoyle and Betty Jean Tewell should not be held in contempt of court was filed by the heirs of William A. Melody, together with the State's Attorney of Cook County (R. 18). Such petition was filed with leave of court, the court further ordered the files impounded and issued body attachments for each of the individuals named in the petition (R. 35).

On September 11, 1964, an order was entered requiring service of the rule on the above named individuals and resetting the date of the hearing on the admission to probate of the Will filed by defendant from September 23, 1964 to September 17, 1964 (R. 37).

On September 17, 1964, after hearing testimony to the effect that the witnesses to the Will of June 21, 1964, affixed their signatures to the document after July 6, 1964, and that the date shown on the Will was inserted by a witness, Velma Hoyle, at the request of Alma Allen and Pauline Owens, the court declared such Will of June 21, 1964, to be a spurious document and denied its admission to probate (R. 38).

On September 21, 1964, with all parties present before the court on the return of the Writs of Attachment previously issued and all parties released on bond, an order was entered continuing the cause to October 27, 1964, requiring at that time, all respondents to answer the charge of contempt pending before the court (R. 39).

On October 21, 1964, the State's Attorney of Cook County filed a separate petition for a rule to show cause against petitioner, S. Edward Bloom, which petition was amended on November 18, 1964, alleging the circumstances hereinbefore described, with supporting affidavits (R. 40, 44). On January 20, 1965, the motion of S. Edward Bloom to dismiss the amended petition of the State's Attorney of Cook County was denied, and a rule to show cause entered and returnable on (R. 63-64) February 1, 1965 (R. 65-64). Petitioner failed to answer the rule. A hearing commenced on February 2, 1965, and culminated on February 24, 1965, with the entry of an order adjudging the petitioner in contempt of court and sentencing him to the County Jail for a period of twenty-four months (R. 71). Defendant's request for a jury trial was denied (R. 78). The Supreme Court of Illinois affirmed, 35 Ill. 2d 255, 220 N. E. 2d 475.

SUMMARY OF ARGUMENT.

An analysis of the decisions of this Court decided on issues involving criminal contempt within the past decade clearly reflect that this Court has never insisted that an individual enjoys a federal constitutional right to a trial by jury in a criminal contempt proceeding. The requirement, in the federal courts, of a trial by jury in criminal contempt cases involving sentences of six months or more rests upon the supervisory power of this Court and not upon any constitutional ground. Since the Fourteenth Amendment empowers this Court to correct any abuse of due process of fundamental fair play in any state court proceeding, any individual adjudged in contempt of court is not without relief, and there is no need for the formulation of a new constitutional doctrine.

The Trial Court did not commit constitutional error by receiving and retaining an investigative report prepared by the *amicus curiae* prior to the institution of contempt proceedings. Petitioner was allowed access to such report on two separate occasions and also before the cross-examination of any of plaintiff's witnesses whose prior statements appeared in the report.

The "harmless constitutional error" rule has application to the prosecutor's closing remarks touching upon petitioner's failure to come forward and testify, rendering such error non-reversible, since the totality of the record indicates that the remarks did not contribute to the final adjudication, within the standard set forth in *Fahy* v. *Connecticut*, 375 U. S. 85, and *Chapman* v. *California*, 386 U. S. 18.

ARGUMENT.

I.

The Sixth Amendment to the United States Constitution Does Not Grant a Right to Trial by Jury in a Criminal Contempt Case Which Can Be Made Applicable to the Several States by Way of the Fourteenth Amendment.

The petitioner's basic contention, which provides the sole jurisdictional ground of this Court in this proceeding, is unequivocal. He proceeds on the theory that the State court's denial of a jury trial "contravened his rights under Article III, Section 2 of the Constitution of the United States and the Fifth and Sixth Amendments thereto as applied to the States by the Fourteenth Amendment" (Pet. Br. 10). Often, the statement of a theory is one thing; the demonstration and application thereof is quite another. The petitioner is experiencing this difficulty in this proceeding. After his statement of his primary contention, his argument loses its force and clarity. He engages in an involved analysis of prior decisions of this Court, which patently ignores the express language of those cases. Hence, he finds it easy and convenient to erroneously conclude "that their (*sic*) now exists on this Court a majority which on constitutional grounds alone would require a jury trial in a federal contempt matter similar to the case at bar" (Pet. Br. 13). There is no basis whatsoever for this conclusion.

It is clear from petitioner's brief that a federal *constitutional* right under the Sixth Amendment is being asserted herein—a right, which, if it does exist, accrues to every alleged contemnor in a State court proceeding by virtue of

the Fourteenth Amendment. This is his argument. That no such constitutional right exists is evident from the recent decisions of this Court.

To begin with, *Green* v. *United States,* 356 U. S. 165, held that the denial of a trial by jury in a criminal contempt case is not a constitutional infirmity. It was there said by the majority that "the principle that criminal contempts of court are not required to be tried by a jury under Article III or the Sixth Amendment is firmly rooted in our tradition." *Green* v. *United States,* 356 U. S. 165, 187. In *United States* v. *Barnett,* 376 U. S. 681, 692, the majority of this Court reaffirmed *Green* as follows:

> "Only six years ago we held a full review of the issue in *Green* v. *United States,* 356 U. S. 165 (1958). We held there that 'the statements of this Court in a long and unbroken line of decisions involving contempts ranging from misbehavior in Court to disobedience of court orders establish beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right.'"

In *Cheff* v. *Schnackenberg,* 384 U. S. 373, it was argued that criminal contempt proceedings were criminal actions falling within the requirements of Art. III and the Sixth Amendment to the Constitution. The petitioner therein contended that the right to a jury trial attaches in all criminal contempts and not merely in those which fall outside the category of "petty offenses." This argument was not accepted by this Court. It was noted that the sentence imposed did not exceed six months and, accordingly, this Court concluded that *Cheff* was properly convicted without a jury. Thereafter the Court continues:

> ". . . At the same time, we recognize that by limiting our opinion to those cases where a sentence not exceeding six months is imposed we leave the federal courts at sea in instances involving greater sentences. Effective administration compels us to express a view on

> that point. Therefore, *in the exercise of the Court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases,* we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof." . . . (Emphasis added.) *Cheff* v. *Schnackenberg,* 384 U. S. 373 at 380.

The petitioner, in his argument, completely ignores and avoids the basis of this Court's ruling. He prefers to assume gratuitously that the Court's determination rested upon constitutional grounds. The quoted language of the case clearly indicates that the majority decision was not bottomed upon any provision of the Federal Constitution, but solely upon its supervisory power over lower federal courts. As of this date, the majority of this Court has never adopted the view that the right to trial by jury in a criminal contempt case is constitutionally mandatory.

The foregoing summary represents the current view of this Court on the issue as to whether the Sixth Amendment guarantees the right to trial by jury to a person charged with criminal contempt. The position of the petitioner completely ignores the thrust of these recent decisions with respect to the extent of constitutional safeguards in this area. This latter observation becomes sharply significant when it is realized that these decisions denying an individual a federal constitutional right are very recent, and the legal doctrines expressed therein were promulgated at a time when constitutional questions in other areas involving personal rights and liberty have been extended far beyond the scope of prior constitutional construction. In short, the legal principles governing the trial of criminal contempt, as we know them today, are the result of a careful reappraisal and reexamination of the question by this Court within the last decade.

It is quite apparent, then, that the present contention of petitioner is not correct and must necessarily rest upon a *non sequitur*: He seeks to impose upon the State courts through the Fourteenth Amendment a constitutional requirement purportedly based upon the Sixth Amendment, which has not been imposed upon the federal courts themselves. It would indeed be anomalous for this Court to sanction a constitutional right to trial by jury in State criminal contempt proceedings while it rests such right in federal criminal contempt proceedings upon a non-constitutional and less stringent requirement.

Moreover, practical considerations in the judicial administration of justice and reason militate against any effort by the petitioner to fashion in this proceeding a retractable yardstick governing Sixth Amendment constitutional rights, which flexibility would be dependent solely upon the length of sentence in the case of criminal contempt. In the first place, a person charged with criminal contempt is entitled to know what his rights are prior to the commencement of proceedings, and should not be forced to await the final step, namely, sentence, to ascertain what rights he should have been accorded.[1]

Secondly, consider the dilemma of the trial judge prior to trial. What standard or foresight must he use, outside of pre-judgment of the cause on trial, to enable him to determine whether the contempt case before him constitutes one which would require the impanelling of a jury, or one which he may summarily hear? There seems inherent in this problem a paradox abhorrent to the Constitution

1. The petitioner may not be prosecuted for any offense arising out of the transpiration of events which is presently involved before the Court (cf: Pet. Br. note 9, p. 16) since the "commission of the offense" occurred on August 11, 1964 (R. 3), and under Illinois law, the limitation within which such prosecution might commence would be three years (Ill. Rev. Stat., 1965, ch. 38 § 3-5).

itself. If the Sixth Amendment right were to be placed on such tenuous grounds, can the safeguards of the Fourteenth Amendment assure an accused a trial free from any preconceived opinions of the trier, not only as to guilt or innocence but as to the severity of sentence as well?

Thirdly, the viewpoint that would link the necessity of a trial by jury, as a matter of constitutional right, with the severity of the punishment, which might be imposed, fails to recognize that a jury, under Illinois law, functions solely with respect to guilt or innocence and has no responsibility to recommend or impose a sentence. The relationship between these two concepts simply does not seem to be sufficiently realistic or practical to warrant the formulation of a constitutional doctrine thereon.

The underlying reason, if any, for the assertion that a person must be guaranteed the right to a jury trial where the sentence exceeds a specified limitation must presumably be the additional safeguard of requiring someone other than the one responsible for sentencing to initially determine whether an accusation of contempt is proven beyond a reasonable doubt. But what application can that rationale have in a proceeding where, as here, petitioner has never seen fit to challenge the *quantum* of evidence which resulted in the adjudication of contempt?

By way of summary, the petitioner endeavors to convince this Court to make a constitutional stride, which heretofore it has consistently refused. The respondent maintains that such doctrine need not be promulgated to satisfy basic concepts of due process. This Court possesses, by way of the Fourteenth Amendment, a constitutional power over State courts which insists upon the notion that "justice must satisfy the appearance of justice." *Levine* v. *United States*, 362 U. S. 610, 616, quoting from *Offutt* v. *U. S.*, 348 U. S. 11, 14. Any abusive exercise by a State court regarding the rights of an individual defendant may

be reached and rectified consistently with fundamental requirements of due process by this Court. In this way, the basic constitutional rights of an alleged contemnor will be protected without violation of the delicate balance which exists between the federal government and the several states. This is especially true when we are dealing with the traditionally inherent power of a court to punish for contempt, which even *Cheff*, upon which the petitioner relies so heavily, regards as *sui generis*. *Cheff* v. *Schnackenberg*, 384 U. S. 373, 380.

II.

The Fifth and Fourteenth Amendments to the Constitution of the United States Were Not Violated by the Failure of the Trial Judge to Allow an Amicus Curiae's Report To Be Made Part of the Record, Since Petitioner's Counsel Was Allowed Access to Such Report During the Cross-Examination of Witnesses Who Testified at the Trial and Made Statements to the Amicus Curiae.

Petitioner contends that the trial court committed constitutional error by investigating petitioner's conduct through the appointment of an amicus curiae, who submitted an investigative report to the judge, by having knowledge of the contents of said report prior to the institution of the proceeding, and by its refusal to make the report part of the record on appeal. The Supreme Court of Illinois, in denying the validity of petitioner's claim, stated (R. 116):

> "The record does not show, nor does the defendant indicate, how the report and its presentation to the judge worked any prejudice or harmed him in any way. The appointment of an amicus curiae to make an investigation has heretofore been recognized as proper (*People* v. *Goss*, 10 Ill. 2d 533), and the evidence, all of which was heard in open court, not only is ample to sustain the finding but is largely undisputed by defendant."

It is not uncommon, in a matter involving contempt of court, for a trial judge to be apprised, in a preliminary context, of certain facts which have occurred outside his presence which may form the basis for the filing of a petition for a rule to show cause. There may be the necessity, in such case, to appoint someone to investigate the informal charges to determine whether the complainant has brought forward a series of facts which might effectuate the issuance of a petition for a rule to show cause. By the same token, the purpose of any preliminary investigation serves the protective purpose of determining, prior to the formal institution of a petition for a rule, whether charges made can sufficiently or reasonably be substantiated. Such initial knowledge on the part of the trial judge is strategically necessary for proper use of the contempt power.

Should petitioner have decided that the amount of knowledge possessed by the trial court has reached the stage where, in his opinion, the judge could not have been considered an impartial observer, a motion for change of venue from said judge, if requested by petitioner, would have to have been granted. Petitioner filed no such motion.

Petitioner has not only failed to show how any prejudice was created by the action of the trial judge in connection with the *Amicus* report, but some doubt arises as to whether the nature of his request regarding the investigative report was not honored. The record indicates that defense counsel made the following statement regarding a request for the report:

> "Mr. Eben: If the Court please, as I indicated to your Honor, that we would move for the production today of the so-called Fink investigative report. I understand your Honor at that time that it would not be made available until some witnesses took the stand, whose statement was reflected in the report. Of course, we have no way of knowing, not having seen the report, but I understand if there is any witness' statement in

the report some place, or reference to any witness, we would like to have that made available.

The Court: It is not a part of the record. It belongs to the Court itself, and the Court will turn it over to you, and you will be at liberty to read it as concerns any witness' testimony. The Court wants to get at the truth or falsity of this entire proceeding. So I will turn it over to you and you may use it for cross-examination. I will give you time to examine it." (R. 80, 81.)

Petitioner's statements concerning the *in camera* nature of the report (Pet. Br., p. 18), and concerning the argument that certain portions of the report were not made available to him (Pet. Br., p. 20) are not accurate reflections of what actually transpired in the trial court (R. 83, 86). The Court made no attempt to conceal the fact that an investigative report had been filed, and gave defense counsel sufficient opportunity to examine its contents. Respondent, therefore, maintains that no constitutional violation had occurred, but that the issue raised represents the product of a theory which is not, and cannot be, related to the facts of the case at bar.

III.

The Comment by the Prosecutor, in a Non-Jury Case, of the Failure of the Alleged Contemnor to Testify in His Own Behalf, Falls Within the "Farmless Constitutional Error" Doctrine of Fahy v. Connecticut, 375 U. S. 85, Which Doctrine Was Reaffirmed in Chapman v. California, 386 U. S. 18.

Petitioner claims that the closing argument of the Assistant State's Attorney, which made reference to the fact that petitioner's counsel failed to produce the petitioner (R. 112), both violates his constitutional rights and requires a reversal of the contempt adjudication. It is the position of respondent, however, that, under the circumstances present in the case at bar, such allegation falls within the "harm-

less error'' rule promulgated by this Court in *Fahy* v. *Connecticut,* 375 U. S. 85 and reaffirmed in *Chapman* v. *California,* 386 U. S. 18.

In *Chapman,* this Court stated as follows (p. 24):

> "There is little, if any, difference between our statement in *Fahy* v. *Connecticut* about 'whether there is a reasonable possibility that the evidence complained about might have contributed to the conviction'' and requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. We, therefore, do no more than adhere to the meaning of our *Fahy* case when we hold, as we now do, that before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt. While appellate courts do not ordinarily have the original task of applying such a test, it is a familiar standard to all courts, and we believe its adoption will provide a more workable standard, although achieving the same result as that aimed at in our *Fahy* case.''

The Court, in refusing to adopt a rule that would allow all such errors to be automatically reversed, further stated (p. 22):

> "We conclude that there may be some constitutional errors which in the setting of a particular case are so unimportant and insignificant that they may, consistent with the Federal Constitution, be deemed harmless, not resulting in automatic reversal of the conviction.''

The application of this principle to the case at bar is quite pertinent when consideration is given to two specific factors: (1) the case was heard by a judge sitting without a jury, and (2) the evidence establishing the basis for the adjudication of contempt was so overwhelming that petitioner, himself, did not question the sufficiency at any time during review by the Supreme Court of Illinois. Viewed in

this light, the error of which petitioner complains is so insignificant as to be placed within the scope of the harmless constitutional error rule.

CONCLUSION.

The decisions of this Court have never required, on constitutional grounds, the granting of a trial by jury in a criminal contempt case. While the latest majority decision of this Court pronounced a non-constitutional right to trial by jury in federal criminal contempt cases, the relief requested by petitioner, a Sixth Amendment right to trial by jury as applied to the states, through the Fourteenth Amendment, is, until today, unprecedented. Respondent maintains that a continuation of existing policy of this Court in refusing to espouse a constitutional right to trial by jury in this area, making use of the Fourteenth Amendment power to correct any abuse of fair play or notions of injustice in a state criminal contempt proceeding, will inevitably result in both the protection of the rights of alleged contemnors and the inviolability of the power of a state court to effectively administer its judicial system.

For all the foregoing reasons, respondent respectfully prays that the decision of the Supreme Court of Illinois be affirmed.

Respectfully submitted,

JOHN J. STAMOS,
State's Attorney of Cook County, Illinois,

EDWARD J. HLADIS,
Chief of Civil Division,
500 Chicago Civic Center,
Chicago, Illinois 60602,
Counsel for Respondent.

RONALD BUTLER,
Assistant State's Attorney,
Of Counsel.

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No. 52

In the

Supreme Court of the United States

OCTOBER TERM, 1967

S. EDWARD BLOOM, *Petitioner,*

vs.

STATE OF ILLINOIS, *Respondent.*

On Writ of Certiorari to the Supreme Court of the State of Illinois.

REPLY BRIEF FOR S. EDWARD BLOOM, PETITIONER

ANTHONY BRADLEY EBEN
One North La Salle Street
Chicago, Illinois 60602

HERBERT F. FRIEDMAN
188 W. Randolph Street
Chicago, Illinois 60602
Counsel for Petitioner

The Scheffer Press, Inc.—ANdover 3-6850

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I.

RESPONDENTS HAVE ATTEMPTED TO INJECT INTO THIS CAUSE IRRELEVANT AND IMMATERIAL MATTERS NOT BEARING ON THE CONSTITUTIONAL ISSUE HERE INVOLVED RELATING TO TRIAL BY JURY.

Respondent's brief is a misguided effort artfully intended to distract this Court from the constitutional issues squarely presented by petitioner. In an obvious

belief in the hoary legal cliché that bad cases make bad law, respondent devotes a third of its brief to an exposition of facts supposedly probative of petitioner's guilt as if this cause were to be determined on the merits.[1]

In this connection, it taunts petitioner for not challenging on appeal the "*quantum* of evidence which resulted in the adjudication of contempt" and urges such failure as indicating that even a jury necessarily would have reached the same result as the trial court. (Resp's Bf., p. 15).[2]

Petitioner is confident that this overt effort to brainwash this Court will be abortive, not only because of the brashness of the attempt but also because the theory upon

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[1] Respondent, however, in its statement of facts neglects to disclose petitioner's psychiatric defense in which a competent psychiatrist testified that in his opinion petitioner's mental state on pertinent dates was such that he had neither an intent to defraud or to embarrass the court or to impede its administration of justice. (R. 111, 112) As pointed out in petitioner's brief, p. 8, such an intent is a necessary element of criminal contempt in Illinois. In addition, Mr. Edward Arkema, referred to in respondent's statement, p. 4, as an attorney for heirs challenging the Will prepared by petitioner and therefore adversary to him, stated at the trial that he had come to the conclusion that petitioner had no awareness of the legal significance of the acts he was carrying on. (R. 98). No one disputes that there was thus a fact question here involved.

[2] Petitioner did not challenge the sufficiency of the evidence in the Illinois Supreme Court in view of the rule prevailing in that State that a verdict will not be disturbed on appeal when there is any evidence which, when taken with its intendments most favorable to an appellee, tends to prove the essential allegations of the complaint. *Fosdick* v. *Servis*, 40 Ill. App. 2d 363 (1963); *Blue* v. *St. Clair Country Club*, 7 Ill. App. 2d 359 (1956). The record here discloses such evidence.

which respondent's peculiar tactics are based is not even good legal nonsense. The supposition that a claimed constitutional right to a jury trial is to be determined by weighing the *quantum* of evidence or by conjecturing whether a hypothetical jury would have reached the same verdict as the trial judge has never received the support of any federal or state court. Obviously, such matters are entirely immaterial. Important constitutional deprivations are determined by reference to the Constitution of the United States and not by guessing whether or not the same result would have ensued had there been no denial of the rights asserted.

II.

RESPONDENT FAILS TO RECOGNIZE THE CONSTITUTIONAL IMPACT OF CHEFF v. SCHNACKENBERG, 384 U.S. 373 ON FEDERAL COURTS INSOFAR AS CRIMINAL CONTEMPT CASES INVOLVING SENTENCES OF MORE THAN SIX MONTHS ARE CONCERNED.

Respondent never does come to grips with the basic proposition asserted by petitioner that the denial of a trial by jury in a criminal contempt case is constitutionally prohibited when the alleged contemptuous conduct also amounts to a felony and is indictable as such. (Petr's Bf. pp. 13, 15-17).[3] Instead, respondent relies on *Green* v.

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[3] Respondent complains that it can no longer indict petitioner since such prosecution is now barred by an Illinois Statute of Limitations (Resp's Bf. p. 14). This is hardly a justification for denying petitioner's claims here. In any event, should those claims be deemed valid by this court, respondent would not thereby be deprived of further proceeding against petitioner since upon remandment under such circumstances, a jury trial of the alleged contempt would still be available.

United States, 356 U.S. 165 and *United States* v. *Barnett*, 376 U. S. 681, neither of which involved conduct amounting to a felony. The failure of respondent to face up to this distinguishing feature and its misreliance on *Green* and *Barnett* is emphasized by its quotation from *Barnett* indicating that those cases are limited to conduct ranging from misbehavior in court to disobedience of court orders (Resp's Bf. p. 12). It is clear that these cases do not reach felonious conduct. In this connection, petitioner has pointed out that none of the long line of cases relied on by Mr. Justice Harlan in *Cheff* v. *Schnackenberg*, 384 U.S. 373, 382, as authority for the proposition that jury trials are not constitutionally required in criminal contempt cases involved conduct similar to that in the case at bar. (Petr's Bf., footnote 8, p. 15). This argument has not drawn any response at all.

Respondent, however, does apparently recognize that *Cheff* presents most serious obstacles to its position. Accordingly it attempts to minimize the impact of this Court's decision by urging that contempts involving sentences of more than six months (as in the instant case) were dealt with under the supervisory powers of this Court rather than constitutionally (Resp's Bf. p. 13). Respondent therefore contends that this Court has imposed no constitutional requirements on federal courts in this respect and therefore cannot impose them *via* the Fourteenth Amendment on state courts. (Resp's Bf. p. 14). In making this argument, respondent ignores petitioner's analysis of this Court's reasoning in *Cheff* but furnishes none of its own which could support its contentions. It seems clear that it could not have done so because this Court in holding that trials by jury are not constitutionally required in criminal contempts involving sentences of six months or less clearly implied that such

trials are constitutionally required where heavier sentences are involved.

Furthermore, the exercise of supervisory power as to pending and future cases in no way detracts from the constitutional issues involved in this case. This Court did not consider the questions raised in *Cheff* as regulatory nor rule making. The approach to the *Cheff* case was definitely on constitutional terms. This Court explicitly stated that it granted Cheff's Petition for Certiorari "limited to a review of the question whether, after a denial of a demand for a jury, a sentence of imprisonment of six months is constitutionally permissible under Article 3 and the Sixth Amendment." To assume the reasoning of the court below, we would have to conclude that this Court, recognizing only a constitutional question, did not resolve it on a constitutional basis.

While this Court resolved the issue in *Cheff* by denominating his six month sentence as satisfactorily suiting the outmost limits of petty offenses, it also, as above stated, clearly implied and agreed that sentences imposed in excess of six months were constitutionally required to provide for jury trial. In summarizing Cheff's argument, the court said that he, Cheff, "would have us hold that the right to trial by jury attaches in all criminal contempts and not merely those which are outside the category of 'petty offenses'." p. 379.

Thus, the main opinion in *Cheff* takes for granted that trial by jury is insured under the Constitution when the sentence exceeds the six month limitation.

The interpretation put on *Cheff* by respondent ignores the entire tenor of this Court's decision. *Cheff* revolves principally about the decision in *District of Columbia* v. *Clawans*, 300 U.S. 617, and clearly approached the ques-

tion of summary punishment as a constitutional one. Illustratively, the dissent of Justices Black and Douglas adverted to and interpreted *Clawans* as reflecting a principle that no offense which carries a substantial penalty can be "petty." In the main opinion, the Court accepted a statement from the dissent in *United States* v. *Barnett,* 376 U.S. 681 at 751 that:

> "At the time of the constitution all types of 'petty' offenses punishable by trivial penalties were generally triable without a jury. This history justifies the imposition without trial by jury of no more than trivial penalties for criminal contempts."

The decision in *Clawans,* so heavily relied on in *Cheff,* makes it clear that the summary imposition of sentences raises a constitutional question.

> "It is settled by the decisions of this Court, which need not now be discussed in detail, that the right of trial by jury, thus secured, does not extend to every criminal proceeding. At the time of the adoption of the Constitution there were numerous offenses, commonly described as 'petty,' which were tried summarily without a jury, by justices of the peace in England, and by police magistrates or corresponding judicial officers in the Colonies, and punished by commitment to jail, a workhouse, or a house of correction. We think, as the Court of Appeals held and respondent concedes, that apart from the prescribed penalty, the offense of which petitioner was convicted is, by its nature, of this class, and that were it not for the severity of the punishment, the offender could not, under our decisions, claim a trial by jury as of right.
>
> * * * *
>
> "But this Court has refused to foreclose consideration of the severity of the penalty as an element to be considered in determining whether a statutory of-

> fense, in other respects trivial and not a crime at common law, must be deemed so serious as to be comparable with common law crimes, and thus to entitle the accused to the benefit of a jury trial prescribed by the Constitution. See *Schick* v. *United States, supra* (195 U.S. 67, 68, 49 L. ed. 101, 102, 24 S. Ct. 826, 1 Ann. Cas. 585)." *District of Columbia* v. *Clawans,* 300 U.S. 617, 625-5.

It is submitted that this Court's decision in *Cheff* was clearly the resolution of a constitutional issue and that the incarceration of this petitioner for a period in excess of the outmost limits of those that can be imposed for petty offenses offends against the Sixth Amendment to the Constitution of the United States, made applicable to states under the Fourteenth Amendment.

III.

RESPONDENT'S CONTENTIONS AS TO THE RIGHTS OF A TRIAL JUDGE TO PRELIMINARY INVESTIGATE IN CAMERA WHETHER OR NOT A CONTEMPT HAS BEEN COMMITTED AGAINST HIM CONFLICTS WITH DECISIONS OF THIS COURT.

Respondent with some cynicism argues that the trial court's *in camera* receipt of its own investigator's report is "strategically necessary for proper use of the contempt power" (Resp's Bf. p. 17). In support of this, it is urged that such preliminary investigation enables the trial court to determine whether contempt charges can be "sufficiently or reasonably substantiated" (Resp's Bf. p. 17). Obviously, this view likens the trial judge to a grand jury which determines whether there is reasonable grounds for a belief that a crime has been committed.

Respondent fails to recognize that it was this precise practice which was condemned in *In re Murchison,* 349

U.S. 133 and *Re Oliver*, 333 U.S. 257. It also fails to note that once a trial judge has determined *in camera* that a contempt charge is "reasonably substantiated," it is extremely unlikely that he will reverse himself upon a hearing.

The Illinois Supreme Court did not decide this point on the grounds now urged here by respondent. It rested its decision as to this portion of the argument solely because (1) it found that it is proper to appoint an *amicus curiae* in contempt cases and (2) petitioner showed no prejudice arising out of the receipt by the trial judge of the secret report.

Petitioner has no quarrel with the court below as to the appointment of an *amicus curiae* to investigate or prosecute herein. His complaint relates solely to the misuse of the investigative report prepared by the *amicus curiae*. As to the second ground, it has heretofore been pointed out that it is impossible for petitioner to demonstrate the prejudice here involved since the trial court for reasons best known to it has refused to make the secret report a part of the record. This fact has drawn no comment from respondent.

Finally the record below despite respondent's contentions clearly supports petitioner's assertion that petitioner was permitted only limited use of the report and then only insofar as it related to witnesses who actually testified (R. 80, 81).

IV.

RESPONDENT HAS FAILED TO DEMONSTRATE THAT THE CONSTITUTIONAL ERROR INHERENT IN THE PROSECUTOR'S COMMENT ON PETITIONER'S FAILURE TO TESTIFY WAS HARMLESS BEYOND REASONABLE DOUBT.

Respondent again misses the thrust of petitioner's argument that the comment by the prosecutor as to petitioner's failure to testify violates his constitutional rights. Petitioner, of course, recognizes the principle of *Chapman* v. *California,* 386 U.S. 18 but maintains that it is not here applicable because there has been no showing that the constitutional error complained of was harmless beyond reasonable doubt. Since the trial court did not state that it was disregarding the prosecutor's comment, it seems clear that he gave it weight particularly since the court stated that the failure of petitioner to testify in his own behalf was a matter of argument to which reply could be made.

CONCLUSION

It is urged that respondent has failed to meet petitioner's arguments and that this cause be reversed and remanded.

Respectfully submitted,

ANTHONY BRADLEY EBEN
HERBERT F. FRIEDMAN
Counsel for R. Edward Bloom,
Petitioner

SUPREME COURT OF THE UNITED STATES

No. 52.—October Term, 1967.

S. Edward Bloom, Petitioner, *v.* State of Illinois. | On Writ of Certiorari to the Supreme Court of Illinois.

[May 20, 1968.]

Mr. Justice White delivered the opinion of the Court.

Petitioner was convicted in an Illinois state court of criminal contempt and sentenced to imprisonment for 24 months for willfully petitioning to admit to probate a will falsely prepared and executed after the death of the putative testator. Petitioner made a timely demand for jury trial which was refused. Since in *Duncan* v. *Louisiana, ante,* p. —, the Constitution was held to guarantee the right to jury trial in serious criminal cases in state courts, we must now decide whether it also guarantees the right to jury trial for a criminal contempt punished by a two-year prison term.

I.

Whether federal and state courts may try criminal contempt cases without a jury has been a recurring question in this Court. Article III, § 2, of the Constitution provides that "[t]he Trial of all Crimes, except in cases of Impeachment, shall be by Jury . . . ." The Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . ." The Fifth and Fourteenth Amendments forbid both the Federal Government and the States from depriving any person of "life, liberty or property, without due process of law." Notwithstanding these provisions, until *United States* v. *Barnett,* 376 U. S. 681, rehearing denied, 377 U. S.

973 (1964), the Court consistently upheld the constitutional power of the state and federal courts to punish any criminal contempt without a jury trial. *Eilenbecker* v. *District Court of Plymouth County*, 134 U. S. 31, 36–39 (1890); *I. C. C.* v. *Brimson*, 154 U. S. 447, 488–489 (1894); *In re Debs*, 158 U. S. 564, 594–596 (1895); *Gompers* v. *United States*, 233 U. S. 604, 610–611 (1914); *Green* v. *United States*, 356 U. S. 165, 183–187 (1958).[1] These cases construed the Due Process Clause and the otherwise inclusive language of Article III and the Sixth Amendment as permitting summary trials in contempt cases because at common law contempt was tried without a jury and because the power of courts to punish for contempt without the intervention of any other agency was considered essential to the proper and effective functioning of the courts and to the administration of justice.

United States v. *Barnett*, *supra*, signaled a possible change of view. The Court of Appeals for the Fifth Circuit certified to this Court the question whether there was a right to jury trial in an impending contempt proceeding. Following prior cases, a five-man majority held that there was no constitutional right to jury trial in all contempt cases. Criminal contempt, intrinsically

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[1] Many more cases have supported the rule that courts may punish criminal contempt summarily, or accepted that rule without question. See cases collected in *Green* v. *United States*, 356 U. S. 165, 191, n. 2 (1958) (concurring opinion); *United States* v. *Barnett*, 376 U. S. 681, 694, n. 12 (1964). The list of the Justices of this Court who have apparently subscribed to this view is long. See *Green* v. *United States*, *supra*, at 192.

The argument that the power to punish contempt was an inherent power of the courts not subject to regulation by Congress was rejected in *Michaelson* v. *United States ex rel. Chicago, St. P., M. & O. R. Co.*, 266 U. S. 42, 65–67 (1924), which upheld the maximum sentence and jury trial provisions of the Clayton Act. Cf. Larremore, Constitutional Regulation of Contempt of Court, 13 Harv. L. Rev. 80 (1900).

and aside from the particular penalty imposed, was not deemed a serious offense requiring the protection of the constitutional guarantees of the right to jury trial. However, the Court put aside as not raised in the certification or firmly settled by prior cases, the issue whether a severe punishment would itself trigger the right to jury trial and indicated, without explication, that some members of the Court were of the view that the Constitution limited the punishment which could be imposed where the contempt was tried without a jury. 376 U. S., at 694–695 and n. 12.

Two years later, in *Cheff* v. *Schnackenberg*, 384 U. S. 373 (1966), which involved a prison term of six months for contempt of a federal court, the Court rejected the claim that the Constitution guaranteed a right to jury trial in all criminal contempt cases. Contempt did not "of itself" warrant treatment as other than a petty offense; the six-month's punishment imposed permitted dealing with the case as a prosecution for "a petty offense, which under our decisions does not require a jury trial." 384 U. S. 373, 379–380 (1966). See *Callan* v. *Wilson*, 127 U. S. 540 (1888); *Schick* v. *United States*, 195 U. S. 65 (1904); *District of Columbia* v. *Clawans*, 300 U. S. 617 (1937). It was not necessary in *Cheff* to consider whether the constitutional guarantees of the right to jury trial applied to a prosecution for a serious contempt. Now, however, because of our holding in *Duncan* v. *Louisiana*, *ante*, p. —, that the right to jury trial extends to the States, and because of Bloom's demand for a jury in this case, we must once again confront the broad rule that all criminal contempts can be constitutionally tried without a jury. *Barnett* presaged a re-examination of this doctrine at some later time; that time has now arrived.

In proceeding with this task, we are acutely aware of the responsibility we assume in entertaining challenges

to a constitutional principle which is firmly entrenched and which has behind it weighty and ancient authority. Our deliberations have convinced us, however, that serious contempts are so nearly like other serious crimes that they are subject to the jury trial provisions of the Constitution, now binding on the States, and that the traditional rule is constitutionally infirm insofar as it permits other than petty contempts to be tried without honoring a demand for a jury trial. We accept the judgment of *Barnett* and *Cheff* that criminal contempt is a petty offense unless the punishment makes it a serious one; but in our view, dispensing with the jury in the trial of contempts subjected to severe punishment represents an unacceptable construction of the Constitution, ". . . an unconstitutional assumption of powers by the [courts] which no lapse of time or respectable array of opinion should make us hesitate to correct." *Black & White Taxicab & Transfer Co.* v. *Brown & Yellow Taxicab & Transfer Co.*, 276 U. S. 518, 533 (1928) (Holmes, J., dissenting). The rule of our prior cases has strong, though sharply challenged, historical support; [2] but neither this circumstance nor the considera-

[2] Blackstone's description of the common-law practice in contempt cases appears in 4 Commentaries on the Laws of England 286–288:

"The process of attachment for these and the like contempts must necessarily be as ancient as the laws themselves; for laws without a competent authority to secure their administration from disobedience and contempt would be vain and nugatory. A power, therefore, in the supreme courts of justice, to suppress such contempts by an immediate attachment of the offender results from the first principles of judicial establishments, and must be an inseparable attendant upon every superior tribunal.

. . . . . .

"If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges, without any further proof or examination. But in matters that arise at a distance, and of which the court cannot have so perfect a knowledge, unless by the confession of the party

tions of necessity and efficiency normally offered in defense of the established rule, justify denying a jury trial in serious criminal contempt cases. The Constitu-

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or the testimony of others, if the judges upon *affidavit* see sufficient ground to suspect that a contempt has been committed, they either make a rule on the suspected party to show cause why an attachment should not issue against him, or, in very flagrant instances of contempt, the attachment issues in the first instance; as it also does if no sufficient cause be shown to discharge; and thereupon the court confirms and makes absolute the original rule." And, see *id.*, at 280. A similar account is contained in 2 Hawkins, A Treatise of the Pleas of the Crown 4, 141 (2d ed. 1724).

Of course, "Blackstone's Commentaries are accepted as the most satisfactory exposition of the common law of England. . . . undoubtedly the framers of the Constitution were familiar with it." *Schick* v. *United States*, 195 U. S. 65, 69 (1904).

Blackstone, however, was acutely aware that this practice was a significant departure from ordinary principles: "It cannot have escaped the attention of the reader that this method of making the defendant answer upon oath to a criminal charge is not agreeable to the genius of the common law in any other instance . . . ." 4 Blackstone, *supra*, at 287.

The unalloyed doctrine that by "immemorial usage" all criminal contempts could be tried summarily seems to derive from Mr. Justice (later Chief Justice) Wilmot's undelivered opinion in *The King* v. *Almon* (1765), first brought to public light by the posthumous publication of his papers, Wilmot, Notes 243 (1802), reprinted in 97 Eng. Rep. 94. Wilmot's opinion appears to have been the source of Blackstone's view, but did not become an authoritative part of the law of England until *Rex* v. *Clement*, 4 Barn. & Ald. 218, 233, 106 Eng. Rep. 918, 923 (K. B. 1821). Cf. *Roach* v. *Garvan*, 2 Atkyns 469, 26 Eng. Rep. 683 (Ch. 1742). See 8 Howell, State Trials 14, 22–23, 49–59 (1816), and the subsequent civil action, *Burdett* v. *Abbot*, 14 East 1, 138, 104 Eng. Rep. 501, 554 (K. B. 1811); 4 Taunt. 401, 128 Eng. Rep. 384 (Ex. 1812); 5 Dow 165, 202, 3 Eng. Rep. 1289, 1302 (H. L. 1817). The historical authenticity of this view has been vigorously challenged, initially by Solly-Flood, The Story of Prince Henry of Monmouth and Chief-Justice Gascoign, 3 Transactions of the Royal Historical Society (N. S.) 47, 61–64, 147–150 (1886). This led to the massive reappraisal of the contempt power undertaken by Sir John Fox: *The King* v. *Almon*, 24 L. Q. Rev. 184, 266 (1908); The Summary Process to Punish Contempt, 25 L. Q.

tion guarantees the right to jury trial in state court prosecutions for contempt just as it does for other crimes.

Rev. 238, 354 (1909); Eccentricities of the Law of Contempt of Court, 36 L. Q. Rev. 394 (1920); The Nature of Contempt of Court, 37 L. Q. Rev. 191 (1921); The Practice in Contempt of Court Cases, 38 L. Q. Rev. 185 (1922); The Writ of Attachment, 40 L. Q. Rev. 43 (1924); J. Fox, The History of Contempt of Court (1927). On contempt generally, see R. Goldfarb, The Contempt Power (1963).

Learned writers have interpreted Fox's work as showing that until the late 17th or early 18th centuries, apart from the extraordinary proceedings of the Star Chamber, English courts neither had, nor claimed, power to punish contempts, whether in or out of court, by summary process. Frankfurter & Landis, Power of Congress over Procedure in Criminal Contempts in "Inferior" Federal Courts—A Study in Separation of Powers, 37 Harv. L. Rev. 1010, 1042–1052 (1924). Cf. Oswald's Contempt of Court 3, n. (*g*) (Robertson ed. 1910). Fox's own appraisal of the evidence, however, seems to have been that prior to the 18th century there probably was no valid basis for summary punishment of a libel on the court by a stranger to the proceedings, but that summary punishment for contempts outside the court consisting in resistance to a lawful process or order of the court, or contumacious behavior by an officer of the court, was probably permissible. J. Fox, The History of Contempt of Court 4, 49–50, 98–100, 108–110, 208–209 (1927); Fox, The Summary Process to Punish Contempt, 25 L. Q. Rev. 238, 244–246 (1909). Although jury trials had been provided in some instances of contempt in the face of the court, Fox does not seem to have questioned that such contempts could be punished summarily. J. Fox, The History of Contempt of Court 50 (1927).

We do not find the history of criminal contempt sufficiently simple or unambiguous to rest rejection of our prior decisions entirely on historical grounds, particularly since the Court has been aware of Solly-Flood's and Fox's work for many years. See *Gompers* v. *United States*, 233 U. S. 604, 611 (1914); *Michaelson* v. *United States ex rel. Chicago, St. P., M. & O. R. Co.*, 266 U. S. 42, 66–67 (1924); *Green* v. *United States*, 356 U. S. 165, 185, n. 18 (1958). In any event, the ultimate question is not whether the traditional doctrine is historically correct but whether the rule that criminal contempts are never entitled to a jury trial is a necessary or an acceptable construction of the Constitution. Cf. *Thompson* v. *Utah*, 170 U. S. 343, 350 (1898).

II.

Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both. In the words of Mr. Justice Holmes:

> "These contempts are infractions of the law, visited with punishment as such. If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech." *Gompers* v. *United States*, 233 U. S. 604, 610 (1914).[3]

Criminally contemptuous conduct may violate other provisions of the criminal law; but even when this is not the case convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same. Indeed, the role of criminal contempt and that of many ordinary criminal laws seem identical—protection of the institutions of our government and enforcement of their mandates.

Given that criminal contempt is a crime in every fundamental respect, the question is whether it is a crime to which the jury trial provisions of the Constitution

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[3] See also *New Orleans* v. *The Steamship Co.*, 20 Wall. 387, 392 (1874) ("[c]ontempt of court is a specific criminal offense"); *O'Neal* v. *United States*, 190 U. S. 36, 38 (1903) (an adjudication for contempt is "in effect a judgment in a criminal case"); *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, 336 (1904) (that criminal contempt proceedings are "criminal in their nature has been constantly affirmed"); *Michaelson* v. *United States ex rel. Chicago, St. P., M. & O. R. Co.*, 266 U. S. 42, 66 (1924) ("[t]he fundamental characteristics of both [crimes and criminal contempts] are the same"); *Green* v. *United States*, 356 U. S. 165, 201 (1958) (dissenting opinion) ("criminal contempt is manifestly a crime by every relevant test of reason or history"). The Court also held in *Bessette*, *supra*, at 335, that criminal contempt "cannot be considered an infamous crime."

apply. We hold that it is, primarily because in terms of those considerations which make the right to jury trial fundamental in criminal cases, there is no substantial difference between serious contempts and other serious crimes. Indeed, in contempt cases an even more compelling argument can be made for providing a right to jury trial as a protection against the arbitrary exercise of official power. Contemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament. Even when the contempt is not a direct insult to the court or the judge, it frequently represents a rejection of judicial authority, or an interference with the judicial process or with the duties of officers of the court.

The court has long recognized the potential for abuse in exercising the summary power to imprison for contempt—it is an "arbitrary" power which is "liable to abuse." *Ex parte Terry*, 128 U. S. 289, 313 (1888). "[I]ts exercise is a delicate one and care is needed to avoid arbitrary or oppressive conclusions." *Cooke* v. *United States*, 267 U. S. 517, 539 (1925).[4]

These apprehensions about the unbridled power to punish summarily for contempt are reflected in the march of events in both Congress and the courts since our Constitution was adopted. The federal courts were established by the Judiciary Act of 1789; § 17 of the Act provided that those courts "shall have power to . . . punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same . . . ." 1 Stat. 83. See *Anderson* v.

[4] "That contempt power over counsel, summary or otherwise, is capable of abuse is certain. Men who make their way to the bench sometimes exhibit vanity, irascibility, narrowness, arrogance, and other weaknesses to which human flesh is heir." *Sacher* v. *United States*, 343 U. S. 1, 12 (1952). See also *Ex parte Hudgings*, 249 U. S. 378 (1919); *Nye* v. *United States*, 313 U. S. 33 (1941); *Cammer* v. *United States*, 350 U. S. 399 (1956).

Dunn, 6 Wheat. 204, 227–228 (1821). This open-ended authority to deal with contempt, limited only as to mode of punishment, proved unsatisfactory to Congress. Abuses under the 1789 Act culminated in the unsuccessful impeachment proceedings against James Peck, a federal district judge who had imprisoned and disbarred one Lawless for publishing a criticism of one of Peck's opinions in a case which was on appeal. The result was drastic curtailment of the contempt power in the Act of 1831, 4 Stat. 487. *Ex parte Robinson*, 19 Wall. 505, 510–511 (1874); *In re Savin*, 131 U. S. 267, 275–276 (1889). That Act limited the contempt power to misbehavior in the presence of the court or so near thereto as to obstruct justice; misbehavior of court officers in their official transactions; and disobedience or resistance to the lawful writ, process, order, or decree of the court.[5] This major revision of the contempt power in the federal sphere, which "narrowly confined" and "substantially curtailed" the authority to punish contempt summarily, *Nye* v. *United States*, 313 U. S. 33, 47–48 (1941), has continued to the present day as the basis for the general

[5] Section 1 of the Act of 1831 stated:

"That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court, shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts." Fox concluded that the 1831 Act was in accord with the general common law of England. See Fox, The History of Contempt of Court 208 (1927). Section 2 of the Act provided for prosecution by the regular criminal procedures of those guilty of obstruction of justice. See generally, Nelles & King, Contempt by Publication in the United States, 28 Col. L. Rev. 401, 525 (1928).

power to punish criminal contempt.[6] 62 Stat. 701, 18 U. S. C. § 401.

The courts also proved sensitive to the potential for abuse which resides in the summary power to punish contempt. Before the 19th century was out, a distinction had been carefully drawn between contempts occurring within the view of the court, for which a hearing and formal presentation of evidence were dispensed with, and all other contempts where more normal adversary procedures were required. *Ex parte Terry*, 128 U. S. 289 (1888); *Ex parte Savin*, 131 U. S. 267 (1889). Later,

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[6] At a later date, when passing the Clayton Act, Congress focused its attention on conduct which was not only criminally contemptuous but which also constituted other crimes under federal or state law. Contempts of this nature, unless committed in the presence of the court or so near thereto as to obstruct justice, or unless they involved disobedience to a court writ, process, order, or decree in a case brought by the United States, were required to be tried to a jury, and the possible punishment was limited to six months, fine of $1,000, or both. 38 Stat. 738, 18 U. S. C. § 402. Circumscription of the contempt power was carried further in the Norris-LaGuardia Act, which extended the right to jury trial to contempt cases arising out of injunctions issued in labor disputes. 47 Stat. 72, 18 U. S. C. § 3692. The Civil Rights Act of 1957, 71 Stat. 638, 42 U. S. C. § 1995, provides a right to a *de novo* trial by jury to all criminal contemnors convicted in cases arising under the Act who are fined in excess of $300 or sentenced to imprisonment for more than 45 days, exception being made for contempts committed in the presence of the court or so near thereto as to obstruct justice, and misbehavior, misconduct, or disobedience of any officer of the court. The Civil Rights Act of 1964, 78 Stat. 268, 42 U. S. C. § 2000h, provides a right to jury trial in all proceedings for criminal contempt arising under the Act, and limits punishment to a fine of $1,000 or imprisonment for six months. Again exception is made for contempts committed in the presence of the court, or so near thereto as to obstruct justice, and for the misbehavior, misconduct, or disobedience of court officers. Proof of criminal *mens reas* is specifically required. See Goldfarb & Kurzman, Civil Rights V. Civil Liberties: The Jury Trial Issue, 12 U. C. L. A. L. Rev. 486, 496–506 (1965).

the Court could say "it is certain that in proceedings for criminal contempt the defendant is presumed to be innocent, he must be proved to be guilty beyond a reasonable doubt, and cannot be compelled to testify against himself." *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 444 (1911). See *Michaelson* v. *United States*, 266 U. S. 42, 66 (1924). Chief Justice Taft speaking for a unanimous Court in *Cooke* v. *United States*, 267 U. S. 517, 537 (1925), said:

> "Due process of law, therefore, in the prosecution of contempt, except of that committed in open court, requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel, if requested, and the right to call witnesses to give testimony, relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed."

Cf. *Blackmer* v. *United States*, 284 U. S. 421, 440 (1932). It has also been recognized that the defendant in criminal contempt proceedings is entitled to a public trial before an unbiased judge, *In re Oliver*, 333 U. S. 257 (1948); *Offutt* v. *United States*, 348 U. S. 11 (1954); see *Ungar* v. *Sarafite*, 376 U. S. 575 (1964); but cf. *Levine* v. *United States*, 362 U. S. 610 (1960).[7] In the federal system many of the procedural protections available to criminal contemnors are set forth in Fed. Rules Crim. Proc. 42.

Judicial concern has not been limited to procedure. In *Toledo Newspaper Co.* v. *United States*, 247 U. S.

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[7] It has also been held that a defendant in criminal contempt proceedings is eligible for executive pardon, *Ex parte Grossman*, 267 U. S. 87 (1925), and entitled to the protection of the statute of limitations, *Gompers* v. *United States*, 233 U. S. 604, 611–613 (1914); *Pendergast* v. *United States*, 317 U. S. 412 (1943).

402 (1918), the Court endorsed a broad construction of the language of the Act of 1831 permitting summary trial of contempts "so near [to the court] as to obstruct the administration of justice." It required only that the conduct have a "tendency to prevent and obstruct the discharge of judicial duty . . . ." *Id.*, at 419. See *Craig* v. *Hecht*, 263 U. S. 255, 277 (1923). This view proved aberrational and was overruled in *Nye* v. *United States*, 313 U. S. 33, 47–52 (1941), which narrowly limited the conduct proscribed by the 1831 Act to "misbehavior in the vicinity of the court disrupting to quiet and order or actually interrupting the court in the conduct of its business." *Id.*, at 52. Cf. *Toledo Newspaper Co.* v. *United States*, *supra*, at 422 (Holmes, J., dissenting). The congressional purpose to fence in the power of the federal courts to punish contempt summarily was further implemented in *Cammer* v. *United States*, 350 U. S. 399, 407–408 (1956). A lawyer, the Court held, "is not the kind of 'officer' who can be summarily tried for contempt under 18 U. S. C. § 401 (2)." In another development, the First Amendment was invoked to ban punishment for a broad category of arguably contemptuous out-of-court conduct. *Bridges* v. *California*, 314 U. S. 252 (1941); *Pennekamp* v. *Florida*, 328 U. S. 331 (1946); *Craig* v. *Harney*, 331 U. S. 367 (1947). Finally, over the years in the federal system there has been a recurring necessity to set aside punishments for criminal contempt as either unauthorized by statute or too harsh. *E. g.*, *Ex parte Robinson*, 19 Wall. 505 (1874); *United States* v. *United Mine Workers*, 330 U. S. 258 (1947); *Yates* v. *United States*, 355 U. S. 66 (1957).[8]

[8] Limitations on the maximum penalties for criminal contempt are common in the States. According to Note, Constitutional Law: The Supreme Court Constructs a Limited Right to Trial by Jury for Federal Criminal Contemnors, 1967 Duke L. J. 632, 654, n. 84, in 26 States the maximum penalty that can be imposed in the absence of a

This course of events demonstrates the unwisdom of vesting the judiciary with completely untrammeled power to punish contempt, and makes clear the need for effective safeguards against that power's abuse. Prosecutions for contempt play a significant role in the proper functioning of our judicial system; but despite the important values which the contempt power protects, courts and legislatures have gradually eroded the power of judges to try contempts of their own authority. In modern times, procedures in criminal contempt cases have come to mirror those used in ordinary criminal cases. Our experience teaches that convictions for criminal contempt, not infrequently resulting in extremely serious penalties, see *United States* v. *Barnett*, *supra*, at 751, are indistinguishable from those obtained under ordinary criminal laws. If the right to jury trial

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jury trial is six months or less, in three States a jury trial must be provided upon demand of the defendant, in three other States the maximum penalty cannot exceed one year (this group of States includes Illinois, however, which, as the present case demonstrates, has no such limitation), in 15 States there is either no limitation upon the maximum penalty which may be imposed, or else that maximum exceeds one year, and finally, in three States, while there are statutes relating to particular kinds of contempt, there are no general contempt provisions. Independent examination suggests that the available materials concerning the law of contempt in some States are such that precise computation is difficult. It is clear, however, that punishment for contempt is limited to one year or less in over half the States.

Most other Western countries seem to be highly restrictive of the latitude given judges to try their own contempts without a jury. See Jann, Contempt of Court in Western Germany, 8 Am. U. L. Rev. 34 (1959); Bigelow, Contempt of Court, 1 Crim. L. Q. 475 (1959); Pekelis, Legal Techniques and Political Ideologies: A Comparative Study, 41 Mich. L. Rev. 665 (1943). By contrast, there was no right of appeal against a conviction for criminal contempt in England until the Administration of Justice Act, 1960, 8 and 9 Eliz. 2, c. 65. See Harnon, Civil and Criminal Contempts of Court, 25 Mod. L. Rev. 179 (1962).

is a fundamental matter in other criminal cases, which we think it is, it must also be extended to criminal contempt cases.

III.

Nor are there compelling reasons for a contrary result. As we read the earlier cases in this Court upholding the power to try contempts without a jury, it was not doubted that the summary power was subject to abuse or that the right to jury trial would be an effective check. Rather, it seems to have been thought that summary power was necessary to preserve the dignity, independence, and effectiveness of the judicial process—"To submit the question of disobedience to another tribunal, be it a jury or another court, would operate to deprive the proceeding of half its efficiency." *In re Debs*, 158 U. S. 565, 595 (1895). It is at this point that we do not agree: in our judgment, when serious punishment for contempt is contemplated, rejecting a demand for jury trial cannot be squared with the Constitution or justified by considerations of efficiency or the desirability of vindicating the authority of the court.

We cannot say that the need to further respect for judges and courts is entitled to more consideration than the interest of the individual not to be subjected to serious criminal punishment without the benefit of all the procedural protections worked out carefully over the years and deemed fundamental to our system of justice. Genuine respect, which alone can lend true dignity to our judicial establishment, will be engendered, not by the fear of unlimited authority, but by the firm administration of the law through those institutionalized procedures which have been worked out over the centuries.

We place little credence in the notion that the independence of the judiciary hangs on the power to try contempts summarily and are not persuaded that the additional time and expense possibly involved in submitting serious contempts to juries will seriously handicap

the effective functioning of the courts. We do not deny that serious punishment must sometimes be imposed for contempt, but we reject the contention that such punishment must be imposed without the right to jury trial. The goals of dispatch, economy, and efficiency are important, but they are amply served by preserving the power to commit for civil contempt and by recognizing that many contempts are not serious crimes but petty offenses not within the jury trial provisions of the Constitution. When a serious contempt is at issue, considerations of efficiency must give way to the more fundamental interest of ensuring the even-handed exercise of judicial power. In isolated instances recalcitrant or irrational juries may acquit rather than apply the law to the case before them. Our system has wrestled with this problem for hundreds of years, however, and important safeguards have been devised to minimize miscarriages of justice through the malfunctioning of the jury system. Perhaps to some extent we sacrifice efficiency, expedition, and low cost, but the choice in favor of jury trial has been made, and retained, in the Constitution. We see no sound reason in logic or policy not to apply it in the area of criminal contempt.

Some special mention of contempts in the presence of the judge is warranted. Rule 42 (a) of the Federal Rules of Criminal Procedure provides that "[a] criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court." This rule reflects the common-law rule which is widely if not uniformly followed in the States. Although Rule 42 (a) is based in part on the premise that it is not necessary specially to present the facts of a contempt which occurred in the very presence of the judge, it also rests on the need to maintain order and a deliberative atmosphere in the courtroom. The power of a judge to quell disturbance cannot attend upon the

impaneling of a jury. There is, therefore, a strong temptation to make exception to the rule we establish today for disorders in the courtroom. We are convinced, however, that no such special rule is needed. It is old law that the guarantees of jury trial found in Article III and the Sixth Amendment do not apply to petty offenses. Only today we have reaffirmed that position. *Duncan* v. *Louisiana*, *ante*, at —. By deciding to treat criminal contempt like other crimes insofar as the right to jury trial is concerned, we similarly place it under the rule that petty crimes need not be tried to a jury.

IV.

Petitioner Bloom was held in contempt of court for filing a spurious will for probate. At his trial it was established that the putative testator died on July 6, 1964, and that after that date Pauline Owens, a practical nurse for the decedent, engaged Bloom to draw and execute a will in the decedent's name. The will was dated June 21, 1964. Bloom knew the will was false when he presented it for admission in the Probate Division of the Circuit Court of Cook County. The State's Attorney of that county filed a complaint charging Bloom with contempt of court. At trial petitioner's timely motion for a jury trial was denied. Petitioner was found guilty of criminal contempt and sentenced to imprisonment for 24 months. On direct appeal to the Illinois Supreme Court, his conviction was affirmed. That court held that neither state law nor the Federal Constitution provided a right to jury trial in criminal contempt proceedings. 35 Ill. 2d 255, 220 N. E. 2d 475 (1966). We granted certiorari, 386 U. S. 1003 (1967).

Petitioner Bloom contends that the conduct for which he was convicted of criminal contempt constituted the crime of forgery under 38 Ill. Rev. Stat. § 17–3. Defendants tried under that statute enjoy a right to jury trial

and face a possible sentence of one to 14 years, a fine not to exceed $1,000, or both. Petitioner was not tried under this statute, but rather was convicted of criminal contempt. Under Illinois law no maximum punishment is provided for convictions for criminal contempt. *People* v. *Stollar*, 31 Ill. 2d 154, 201 N. E. 2d 97 (1964). In *Duncan* we have said that we need not settle "the exact location of the line between petty offenses and serious crimes" but that "a crime punishable by two years in prison is . . . a serious crime and not a petty offense." *Ante*, at —. Bloom was sentenced to imprisonment for two years. Our analysis of *Barnett*, *supra*, and *Cheff* v. *Schnackenberg*, *supra*, makes it clear that criminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty involved. Under the rule in *Cheff*, when the legislature has not expressed a judgment as to the seriousness of an offense by fixing a maximum penalty which may be imposed, we are to look to the penalty actually imposed as the best evidence of the seriousness of the offense. See, *ante*, p. —, n. 35. Under this rule it is clear that Bloom was entitled to the right to trial by jury, and it was constitutional error to deny him that right. Accordingly, we reverse and remand for proceedings not inconsistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 52.—October Term, 1967.

S. Edward Bloom, Petitioner, *v.* State of Illinois.	On Writ of Certiorari to the Supreme Court of Illinois.

[May 20, 1968.]

Mr. Justice Harlan, whom Mr. Justice Stewart joins, dissenting.

I dissent for the reasons expressed in my dissenting opinion in *Duncan* v. *Louisiana, ante,* p. —, and in my concurring and dissenting opinion in *Cheff* v. *Schnackenberg,* 384 U. S. 373, 380. See also *United States* v. *Barnett,* 376 U. S. 681; *Green* v. *United States,* 356 U. S. 165.

This case completes a remarkable circle. In *Duncan, ante,* the Court imposed on the States a rule of procedure that was neither shown to be fundamental to procedural fairness nor held to be part of the originally understood content of the Fourteenth Amendment. The sole justification was that the rule was found in the Bill of Rights. The Court now, without stating any additional reasons, imposes on the States a related rule that, as recently as *Cheff* v. *Schnackenberg, supra,* the Court declined to find in the Bill of Rights. That the words of Mr. Justice Holmes,* inveighing against a century of "unconstitutional assumption of [state] powers by the courts of the United States" in derogation of the central premise of our Constitution, should be invoked to support the Court's action here can only be put down to the vagaries of the times.

B. & W. Taxi Co. v. *B. & Y. Taxi Co.,* 276 U. S. 518, 532, at 533 (dissenting opinion, quoted *ante,* p. 4).